

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

This Document Relates to:
All Cases

)
)
)
) MDL No. 1:13-md-2419-FDS
)
)
)

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY CASES

This Document Relates to:
All Cases

)
)
) Master Docket No. 12-12052-FDS
)
)
)

**POST-HEARING MEMORANDUM OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS IN SUPPORT OF CHAPTER 11 TRUSTEE'S MOTION TO
TRANSFER PERSONAL INJURY TORT AND WRONGFUL DEATH CASES TO
THIS COURT PURSUANT TO 28 U.S.C. § 157(b)(5) AND 1334**

The Official Committee of Unsecured Creditors (the “Official Committee”) in the Chapter 11 case (the “Chapter 11 Case”) of New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center (“NECP” or the “Debtor”), by and through its undersigned counsel, respectfully submits this Post-Hearing Memorandum (the “Memorandum”) pursuant to which the Official Committee joins the *Trustee’s Post-Hearing Memorandum in Support of the Chapter 11 Trustee’s Motion to Transfer Personal Injury Death Cases to this Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334* (the “Trustee’s Memorandum”) and provides additional arguments in support of the *Chapter 11 Trustee’s Motion to Transfer Personal Injury Death Cases to this Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334* (the “Trustee’s Transfer Motion”). In support of this Memorandum, the Official Committee respectfully states as follows:

I. Increasing Indemnity And Contribution Claims Against The Estate Will Likely Dilute Distributions To Tort Claimants

1. At the May 14th hearing (the “Hearing”), this Court posed several questions to the Trustee’s counsel regarding the potential effects of contribution and indemnity claims against NECP, particularly in connection with the consequences of allowing plaintiff claims against non-Debtors (who are potentially liable for injuries resulting from the contamination of NECP products) to continue to be prosecuted in state courts outside of the centralized control and supervision of this Court. The Official Committee respectfully submits that the increase in the number and amounts of indemnity and contribution claims against NECP resulting from the continued prosecution of these cases in state courts – including the fact that these claims will have the likely effect of diluting distributions to tort claimants in the Chapter 11 Case – require the centralization (and resulting control and supervision) of all actions in this Court, as explained more fully below, in the Trustee’s post-hearing submission to this Court and in the Trustee’s and Official Committee’s prior submissions to this Court.

2. At the Hearing, the Official Committee raised Bankruptcy Code Sections 509(c) and 510, and per this Court’s authorization to submit supplemental briefing, the Official Committee hereby expands on the impact and meaning of these sections, as well as Bankruptcy Code Section 502(e), in the context of this particular case.

3. If the Court does not grant the Trustee’s Transfer Motion, the Trustee and the Official Committee will be compelled to monitor actions against non-Debtor third parties in other forums, because an excessive judgment in another court would impair the Trustee’s ability to make fair and equitable distributions to creditors in the Chapter 11 Case, many of whom are tort victims in this MDL Proceeding. To the extent that tort victims obtain and satisfy judgments against non-Debtor third parties, those entities would have indemnity or contribution claims

against the estate that would likely rank equally with the claims of other unsecured creditors, including tort victims, thereby reducing recoveries to these and other creditors.

4. A review of several sections of the Bankruptcy Code assists in understanding the relative priorities of non-Debtor third parties as compared to other claimants. Read together, Bankruptcy Code Sections 502(e)¹ and 509(c)² require a non-Debtor third party who is “co-liable” with the debtor to elect either (i) a claim for reimbursement or contribution under Bankruptcy Code Section 502 (where a claim is allowed if and when it becomes fixed and non-contingent), or (ii) subrogation under Bankruptcy Code Section 509(c) (which would permit the non-Debtor third party to assert the tort victim’s claim). See 11 U.S.C. § 502(e); 11 U.S.C. § 509(c); see also 4 Collier on Bankruptcy ¶ 502.06[2][e]. In either case, the non-Debtor third party’s claim will be subordinated to the underlying tort victim’s claim, but only until that tort victim’s claim is paid in full. See 11 U.S.C. § 509(c).

¹ Pursuant to Bankruptcy Code Section 502(e):

(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

- (A) such creditor’s claim against the estate is disallowed;
- (B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or
- (C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

² 11 U.S.C. § 502(e).
Bankruptcy Code Section 509(c) provides “[t]he court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor’s claim, until such creditor’s claim is paid in full, either through payments under this title or otherwise.” 11 U.S.C. § 509(c).

5. Pursuant to Bankruptcy Code Section 502(e), the bankruptcy court must disallow “any claim for reimbursement or contribution” by an entity co-liable with the debtor to the extent (A) the creditor’s claim has been disallowed; (B) the claim for reimbursement or contribution is contingent at the time of allowance or disallowance of the claim; or (C) the entity asserts a right of subrogation under Bankruptcy Code Section 509(c). See 11 U.S.C. § 502(e). The purpose of the contingent claim disallowance provision of Bankruptcy Code Section 502(e)(1)(B) is to eliminate the risk of double recovery against a debtor that could otherwise result if the underlying creditor was permitted to recover its full allowed claim and the party seeking contribution or reimbursement were allowed to recover on its claim even if it remained contingent. S. Rep. No. 95-989, at 65 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5851 (explaining that Bankruptcy Code Section 502(e)(1)(B) was drafted to “prevent[] competition between a creditor and his guarantor for the limited proceeds in the estate”). Thus, if a claim for contribution or reimbursement has become fixed and non-contingent by the time its allowance is considered, it is allowable.

6. It is notable that nothing in the Bankruptcy Code requires that allowance of all claims be decided prior to confirmation of a plan. Indeed, in many cases claim resolution continues well beyond confirmation, and courts frequently consider questions as to whether claims for reimbursement or contribution are contingent under Bankruptcy Code Section 502(e) well after plan confirmation. See, e.g., Sorensen v. Drexel Burnham Lambert Grp. (In re The Drexel Burnham Lambert Grp.), 146 B.R. 92 (S.D.N.Y. 1992) (considering disallowance of indemnification claim). And even if a claim is disallowed as contingent pursuant to Bankruptcy Code Section 502(e)(1)(B), there is a possibility under Bankruptcy Code Section 502(j) that it might be reconsidered when the contingency is resolved. See In re Drexel Burnham Lambert

Grp., 148 B.R. 982, 991 (Bankr. S.D.N.Y. 1992) (disallowing reimbursement claim but holding disallowance was subject to the right to have the disallowed claim reconsidered if the contingency was resolved in the future).

7. For these reasons, any plan of reorganization likely will need to contain reserves to pay any contingent claims that subsequently become fixed. Moreover, the necessity to maintain these reserve funds may prohibit the Trustee from making interim distributions on any claims, until all contingent claims are allowed or disallowed. While the Bankruptcy Code does permit claim estimation for purposes of voting or distribution, see 11 U.S.C. § 502(c), bankruptcy courts rarely exercise such authority with respect to distribution. Indeed, estimation is only appropriate when it would “unduly delay the administration of the case.” 11 U.S.C. § 502(c).³ Thus, the very existence of contingent claims as of plan confirmation will likely delay distributions to any unsecured creditors until these claims have been resolved. Transferring all of the cases to this Court will ensure that this Court may monitor, control and supervise the progress of all actions, including those that may lead to contingent claims in the Chapter 11 Case.

8. Bankruptcy Code Section 509(c) is also necessary to an understanding of the treatment of claims for reimbursement and contribution. Pursuant to Bankruptcy Code Section 509(c), the bankruptcy court will subordinate the claim of a *co-liable party* against the estate, such as a subrogation claim or the indemnity or contribution claim of a non-Debtor third party, to the claim of an underlying creditor such as a tort claimant *until the creditor is paid in full*. See

³ To the extent that claims are disallowed under Bankruptcy Code Section 502(e)(1)(B), estimation may not be available. See, e.g., Drexel Burnham, 148 B.R. at 991 (“[T]he claim may be estimated only if it is not disallowed by § 502(e)(1)(B).”).

11 U.S.C. § 509(c); see also 4 Collier on Bankruptcy ¶ 509.04.⁴ Accordingly, if the holder of a tort claim receives satisfaction of his claim – through a judgment or potentially even a settlement against a jointly liable indemnity/contribution claimant – the indemnity/contribution claim is not subordinated. By way of example, if a tort claimant were to receive and be paid on a judgment against a non-Debtor third party, jointly, by way of a jury verdict, the tort claimant arguably would have received the full payment to which he was entitled (*i.e.* “paid in full”), and when the non-Debtor third party filed an indemnity or contribution claim against NECP, that claim would be *pari passu* (*i.e.* rank equally) to the claims of all other creditors. That would then dilute distributions to all other unsecured creditors, including other tort claimants. Likewise, if the non-Debtor third party were permitted to assert the claims of the underlying tort claimant through subrogation, that claim would have a similar dilutive effect on other unsecured creditors, notwithstanding that the underlying tort claimant herself received full payment. Thus, under any scenario, judgments against certain non-Debtor third parties may provide for full judgments to some individual plaintiffs, while reducing the recovery of all other claimants in NECP’s Chapter 11 Case.

⁴ Bankruptcy Code Sections 502(e) and 509(c) have been held to apply wherever there is “a shared liability to the same party on the same claim” by the debtor and the claimant. See 4 Collier on Bankruptcy ¶ 502.06[2][b]; see also In re Baldwin-United Corp., 55 B.R. 885, 890 (Bankr. S.D. Ohio 1985) (“The phrase, ‘an entity that is liable with the debtor’ is broad enough to encompass any type of liability shared with the debtor, whatever its basis.”). Thus, courts have applied those provisions to tort-based claims. See Juniper Dev. Grp. v. Kahn (In re Hemingway Transport, Inc.), 993 F.2d 915, 924 (1st Cir. 1993) (applying Bankruptcy Code Section 502(e)(1)(B) to “joint and several” tort-based obligations). However, claims for “indemnification” of legal fees have been held to be outside the restrictions of Bankruptcy Code Sections 502(e) and 509(c), as the liability for such fees does not have its “origins in a primary liability to the underlying [t]ort [p]laintiff.” See In re Chemtura Corp., 436 B.R. 286, 296 (Bankr. S.D.N.Y. 2010); but see Drexel Burnham, 146 B.R. at 97 (finding that defense costs and the underlying action for indemnification were “simply different facets of the same unified whole”, thus they all fell under Bankruptcy Code Section 502(e)(1)(B)).

9. Although the rule is typically that contribution and reimbursement claims are treated *pari passu* where the underlying creditor's claim is paid in full, Bankruptcy Code Section 510(c)⁵ does permit the Bankruptcy Court to equitably subordinate contribution and reimbursement claims after a trial on an adversary proceeding (a plenary action) against the subject creditor against whom subordination is sought. However, in order to equitably subordinate a claim, (i) the claimant must have engaged in inequitable conduct; (ii) the misconduct must have led to injury to creditors or given an unfair advantage to the claimant; and (iii) equitable subordination of the claim must not be inconsistent with the Bankruptcy Code. See Merrimac Paper Co. v. Harrison (In re Merrimac Paper Co.), 420 F.3d 53, 59 (1st Cir. 2005); see also In re Mobile Steel Co., 563 F.2d 692 (5th Cir. 1977). Thus, in order to equitably subordinate indemnification and contribution claims to those of tort claims, the Trustee would be required to litigate in a plenary action whether, with respect to *each* indemnity/contribution claimant, the circumstances of each such claimant's conduct satisfy the Mobile Steel test at the expense of the estate and other creditors.

10. These provisions regarding contribution and indemnification claims create ample opportunities for litigation and uncertainty, increasing the cost to the estate if they are not controlled and supervised by this Court through centralization in this MDL proceeding. For example, there may be disagreement as to whether judgments with third parties satisfy the "paid in full" requirement pursuant to Section 509(c) such that the non-Debtor third party's claim is

⁵ Under Bankruptcy Code Section 510(c), "...after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of an allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

11 U.S.C. § 510(c).

subordinated. Or there may be issues as to whether such claims may be disallowed as contingent before there is any opportunity provided to resolve the contingency. Finally, litigation as to equitable subordination will cause the estate to incur significant additional expense, particularly in light of its highly fact-specific nature.

II. The Court Has A Limited Ability To Control Discovery Of NECP

11. If this Court were to deny the Trustee's Transfer Motion, and the state court actions were permitted to go forward against non-Debtor third parties, this Court would have very little ability to control discovery in those actions, including discovery against NECP. The automatic stay imposed by NECP's Chapter 11 Case would not prevent discovery against the Debtor in connection with cases in which the Debtor is not a party. See 3 Collier on Bankruptcy ¶ 362.03 ("Litigation in which the debtor is not a party and that only collaterally affects the debtor is not stayed. For example, discovery against the debtor in an action against defendants other than the debtor is not stayed.") (citing In re Carlson, 265 B.R. 346 (Bankr. D.R.I. 2001)). The only opportunity the Trustee would have to affect discovery would be through individual plenary actions, typically brought before the Bankruptcy Court, against the parties seeking discovery, by which NECP would argue that the discovery would adversely affect the debtor's estate, frustrate the statutory scheme embodied in the Bankruptcy Code or interfere with the debtor's efforts to reorganize. See, e.g., 11 U.S.C. § 105(a); North Star Contracting Corp. v. McSpedon (In re North Star Contracting Corp.), 125 B.R. 368, 370-71 (S.D.N.Y.1991) (staying action against non-debtor president of debtor when, among other things, continuation of action would distract vital non-debtor and there was no distinct cause of action against him, but merely an action commenced solely to circumvent the stay). Forcing the Trustee to either submit to discovery or engage in multiple, contentious and highly-litigated suits over extension of the

bankruptcy stay will cause significant expense to the estate. If instead the cases were transferred to this Court, this Court could control and supervise discovery through case management orders, similar to those that have already been entered in this case.

12. Any discovery sought from the Trustee by a plaintiff in an action not transferred to this Court (a “Non-Transferee Plaintiff”) would be conducted exclusively through the state court letter rogatory process, over which the Court could exercise little or no control.

13. Under this process, a Non-Transferee Plaintiff would request that the court in which its action is pending issue a letter rogatory. The Non-Transferee Plaintiff would then file an application in Massachusetts state court based on the letter rogatory, seeking an order allowing discovery to be conducted within the Commonwealth. See G.L. c. 233, § 45; G.L. c. 233A, § 11. The state court would then rule on the application and, if it were granted, notice would be provided only to the parties to the out-of-state action. See G.L. c. 233A, § 11.

14. In addition to limiting this Court’s much-needed control over discovery sought from the Trustee, the use of the letter rogatory process would no doubt lead to waste and duplication of effort. Not only would the Trustee have to provide documents and testimony that would likely otherwise be produced in this case, but the Trustee would be subject to individual, uncoordinated letter rogatory applications from each Non-Transferee Plaintiff.

15. This an unreasonable burden to place on the Trustee, who will otherwise be involved in intensive discovery overseen by this Court. Moreover, it would result in an unjustified waste of the limited resources remaining in the Debtor’s estate. In addition, discovery as to NECP’s affiliates, shareholders, directors and other related parties located in Massachusetts would likely also be subject to the above process. This would inevitably increase indemnification claims against the estate.

16. The Official Committee, seeking not only this Court's coordination of discovery but also to avoid unnecessary waste, believes this is a further reason to grant the Trustee's Transfer Motion.

III. The Mechanics Of Transferring Cases To This Court

17. The Official Committee also wishes to address the mechanics of transfer, as discussed at the Hearing. If this Court grants the Trustee's Transfer Motion, the Official Committee suggests the following process.

18. This Court would first enter an order (the "Transfer Order") pursuant to 28 U.S.C. § 157(b)(5) transferring the cases listed in the Trustee's *Notice of Filing of Second Amended Schedule of Pending Actions* [Case No. 13-2419, Dkt. No. 92]. See Order Granting Petition of Debtors-in-Possession Pursuant to 28 U.S.C. § 157(b)(5), In re Metabolife Int'l, Inc., Case No. 05-01802 [Dkt. No. 29] (S.D. Cal. Nov. 3, 2005) attached hereto as **Exhibit A**; see also Opinion and Order, In re Twin Labs. Inc., Case No. M-47 (S.D.N.Y. Nov. 3, 2003) attached hereto as **Exhibit B**.

19. Pursuant to the Transfer Order, this Court would approve the form *Notice of Removal and Transfer Pursuant to 28 U.S.C. § 157(b)(5)* (the "Notice") attached hereto as **Exhibit C**. The Trustee would file the Notice in this Court to effect removal of all future cases filed in various state courts throughout the country.

20. Alternatively, if needed, this Court could enter a supplemental order (the "Supplemental Order") identifying the specific actions to be transferred to this Court. See Supplemental Order Regarding Transfer of Cases Pursuant to 28 U.S.C. § 157(b)(5), In re Metabolife Int'l, Inc., Case No. 05-01802 [Dkt. No. 31] (S.D. Cal. Dec. 5, 2005) attached hereto as **Exhibit D**.

21. Lastly, the Official Committee wishes to emphasize that the Transfer Order would, per the Trustee's representation, transfer cases to this Court for discovery purposes only. See Memorandum of Law in Support of Chapter 11 Trustee's Motion to Transfer Personal Injury Tort and Wrongful Death Cases to this Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334 [Case No. 13-2419, Dkt. No. 38] at 8 (cases are coordinated for pretrial purposes); *Omnibus Memorandum in Reply to Various Oppositions and In Further Support of Chapter 11 Trustee's Motion to Transfer* [Case No. 13-2419, Dkt. No. 146] at 12 ("parallel state court actions threaten not only to undermine this Court's ability effectively to manage discovery and pretrial proceedings but also, ultimately, to achieve global settlement"); see also Joinder of the Official Committee of Unsecured Creditors to (I) the Trustee's Motion to Transfer Personal Injury Tort and Wrongful Death Cases to this Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334 and (II) the Trustee's Memorandum in Opposition to Motion for Mandatory Abstention and In Further Support of Motion to Transfer All Related Actions to the District of Massachusetts [Case No. 13-2419, Dkt. No. 138] at 6.

22. At the proper time or if particular circumstances of their case warranted transfer, the parties can move this Court for appropriate relief. Depending on the circumstances, parties would have the authority to move, with (or even without) the Trustee's consent, for an order

transferring or remanding the case back for trial to the initial transferor court. See 28 U.S.C. § 157(b)(5);⁶ 28 U.S.C. § 1334(c)(1);⁷ 28 U.S.C. § 1404(a);⁸ 28 U.S.C. § 1406(a);⁹ 28 U.S.C. § 1452(b).¹⁰ Both 28 U.S.C. § 1334(c)(1) and 28 U.S.C. § 1452, as equitable remedies, would permit this Court to transfer cases from this Court back to individual state courts directly.

23. Contrary to the suggestion of counsel for the Roanoke Plaintiffs during argument before the Court on May 14, 2013, transfer would not impair those plaintiffs' due process rights or rights to a jury trial. See Transcript of Status Conference/Motion Hearing at 53:20-24. Per the Trustee's Transfer Motion, transfer to this Court would be for purposes of discovery and case administration during this phase of the litigation. Simply put, the transferred cases would be supervised, coordinated and controlled in the same manner as the cases presently before this Court in the MDL Proceeding and would be returned to their home jurisdictions for trial in the event that they were not resolved here in coordination with the Debtor's Chapter 11 Case in the manner articulated in the Trustee's submissions. It should be noted that even if the cases were transferred to this Court *for all purposes* pursuant to Bankruptcy Code Section 157(b)(5) – which is allowed by that section but beyond the relief sought by the Trustee – the plaintiffs in the

⁶ 28 U.S.C. § 157(b)(5): "The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending."

⁷ 28 U.S.C. § 1334(c)(1): "Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court, in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

⁸ 28 U.S.C. § 1404(a): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented."

⁹ 28 U.S.C. § 1406(a): "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

¹⁰ 28 U.S.C. § 1452(b): "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground."

transferred cases would, of course, continue to have their right to a jury trial before this Court.
28 U.S.C. § 157(b)(5); 28 U.S.C. § 1411.

24. The Official Committee believes that this would be an appropriate process in order to expeditiously and efficiently transfer all cases to this Court.

CONCLUSION

For the reasons set forth herein and in all the submissions made by the Trustee and the Official Committee in connection with the Trustee's Transfer Motion, the Official Committee respectfully requests that this Court grant the Trustee's Transfer Motion.

Dated: May 20, 2013
Boston, Massachusetts

BROWN RUDNICK LLP

By: /s/ William R. Baldiga
William R. Baldiga, Esq. (BBO #542125)
Rebecca L. Fordon, Esq. (BBO #664578)
One Financial Center
Boston, Massachusetts 02111
Telephone: (617) 856-8200
Facsimile: (617) 856-8201
wbaldiga@brownrudnick.com
rfordon@brownrudnick.com

and

David J. Molton, Esq. (admitted *pro hac vice*)
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801
dmolton@brownrudnick.com

*Counsel to the Official Committee of Unsecured
Creditors of New England Compounding Pharmacy,
Inc.*

CERTIFICATE OF SERVICE

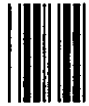
I, Carol S. Ennis, hereby certify that on May 20, 2013, I caused a copy of the foregoing Post-Hearing Memorandum of the Official Committee of Unsecured Creditors in Support of Chapter 11 Trustee's Motion to Transfer Personal Injury Tort and Wrongful Death Cases to this Court Pursuant to 28 U.S.C. § 157(B)(5) and 1334 to be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, by first class mail, postage prepaid.

Dated: May 20, 2013
Boston, Massachusetts

/s/ Carol S. Ennis
Carol S. Ennis

61162684

EXHIBIT A



JAH 11/4/05 12:04
3:05-CV-01802 METABOLIFE INTL INC V.
29
0.

05 NOV -3 AM 8:22

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re

METABOLIFE INTERNATIONAL, INC.
and ALPINE HEALTH PRODUCTS, LLC,

Debtors/Petitioners,

CASE NO. 05cv1802-IEG(RBB)

Order Granting Petition of Debtors-
in-Possession Pursuant to 28 U.S.C.
§ 157(b)(5) [Doc. No. 1]

Debtors-in-possession Metabolife International, Inc. ("Metabolife") and Alpine Health Products, LLC ("Alpine Health") (together with Metabolife, the "Debtors-in-Possession"), petition the Court pursuant to 28 U.S.C. § 157(b)(5) for an order determining that personal injury tort and wrongful death ("PITWD") claims, which cannot be tried in a bankruptcy court, shall be heard in this district court rather than in state and federal courts throughout the country. Debtors-in-Possession also seek related ancillary relief as necessary to implement the transfer the cases to this Court. Debtors-in-Possession do not, at this time, seek transfer of the approximately 200 MDL Actions currently pending before the Southern District of New York to this Court for pretrial management. Debtors-in-Possession, however, do seek immediate transfer of all other non-MDL PITWD actions to this Court. Debtors-in-Possession have served a copy of their petition upon counsel for all interested parties, including counsel for all PITWD plaintiffs.

1 Metabolife's sole shareholders, Michael Blevins, William Bradley, and Michael Ellis, have
2 joined in the petition. These parties, however, additionally ask the Court to immediately transfer to
3 this Court all Ephedra Actions, including those which are part of the S.D.N.Y. MDL Action.

4 The Official Committee of Unsecured Creditors ("Committee"), appointed in the
5 coordinated Metabolife and Alpine Health bankruptcy actions, has filed a limited opposition. The
6 Committee argues that although this Court should be designated as the proper forum for trial of all
7 PITWD ephedra actions, the existing MDL Transfer Order, as well as the "tag-along" requirements
8 of MDL Rules 1.1 and 7.4, require that all actions, once removed to this District, be transferred to
9 the MDL Proceedings for all pretrial management purposes. The Committee, therefore, opposes
10 the shareholders' proposal to immediately transfer the MDL Actions to this Court.

11 Oppositions have been filed by Christopher Harris, and Jerome and Susana Kreutzer, who
12 have PITWD actions pending before the San Diego County Superior Court as part of coordinated
13 proceeding JCCP 4360. An opposition has also been filed by certain doctors who are defendants to
14 a PITWD action that was made part of the S.D.N.Y. MDL Action.

15 The Plaintiffs' Coordinating Committee ("PCC") of the S.D.N.Y. Ephedra MDL Action
16 also filed a late "response" to Metabolife's petition. In that "response" the PCC asks the Court to
17 transfer all the "adversary proceedings" involving PITWD claims against Metabolife to the MDL
18 Judge in S.D.N.Y. pursuant to 28 U.S.C. § 1412. Debtors-in-Possession have filed a consolidated
19 reply responding to the arguments of each of these parties.

20 A hearing was held before Chief Judge Irma E. Gonzalez on October 24, 2005. Robert
21 Barnes appeared on behalf of Debtors-in-Possession. Victor Vilaplana and Peter Gurfein appeared
22 on behalf of shareholders Michael Blevins, William Bradley, and Michael Ellis. David Molton and
23 Christine Bauer appeared on behalf of the Official Committee of Unsecured Creditors. Laura
24 Taylor appeared on behalf of the Unofficial Retailers' Committee. Fernando DeLeon, Edward
25 Blizzard, and Anne Andrews appeared on behalf of the Ephedra MDL Plaintiffs' Coordinating
26 Committee. Steven Siskos appeared on behalf of the JCCP Plaintiffs' Coordinating Committee.
27 Manuel Corrales appeared on behalf of San Diego Superior Court Plaintiffs Jerome and Susana
28 Kreutzer. Thomas Tosdal appeared on behalf of San Diego Superior Court Plaintiff Christopher

1 Harris. Lisa Ackley appeared on behalf of third party Chemins. Paul LaScala appeared on behalf
2 of third party Wal-Mart.

3 **Background**

4 Debtors-in-Possession filed a petition for bankruptcy under chapter 11 of the Bankruptcy
5 Code in the United States Bankruptcy Court for the Southern District of California on June 30,
6 2005 (Case No. 05-06040). Those bankruptcy proceedings are being jointly administered by Chief
7 Bankruptcy Judge John Hargrove . At the time the bankruptcy petitions were filed, approximately
8 362 ephedra-based personal injury tort and wrongful death ("PITWD") actions were pending
9 against Metabolife and/or Alpine Health in state and federal courts. These PITWD cases allege
10 injuries resulting from the purchase and use of Metabolife's products that contained ephedra.

11 Approximately 200 Ephedra Actions have been transferred to the District Court for the
12 Southern District of New York pursuant to an April 13, 2004 MDL Transfer Order. Judge Jed S.
13 Rakoff is presiding over the consolidated pretrial management of the MDL claims. In addition,
14 there are approximately 90 actions pending before California state courts which have been
15 coordinated by the Judicial Council of California ("JCCP") in a single proceeding in the San Diego
16 County Superior Court before Judge Ronald Styn.¹ There are approximately 73 additional actions
17 pending in various state or federal courts around the country. In addition to Metabolife and Alpine
18 Health, many of the Ephedra Actions name other parties with a connection to Metabolife, such as
19 retailers or entities that sold Metabolife products to the users, manufacturers of Metabolife
20 products, distributors, and Metabolife's shareholders.

21 After Metabolife and Alpine filed their bankruptcy petitions on June 30, 2005, the
22 bankruptcy court appointed an Official Committee of Unsecured Creditors ("Committee") under
23 11 U.S.C. § 1102. The Committee is made up of certain plaintiffs in the Ephedra Actions as well
24 as certain trade creditors of the Debtors-in-Possession. Debtors-in-Possession have moved the
25 bankruptcy court for approval of the sale of substantially all of their assets. That sale is currently
26 set for November 3, 2005.

27
28 ¹ On September 27, 2005, Superior Court defendants Wal-Mart, Rite-Aid Corp., Costco
Wholesale Corp., and The Chemins Company removed 20 of the San Diego Superior Court JCCP
actions to Southern District of California Bankruptcy Court.

1 Pursuant to the provisions of the bankruptcy code, all Ephedra Actions against Debtors-in-
2 Possession were automatically stayed with the filing of the bankruptcy. On July 8, 2005, Judge
3 Styn issued an order staying the JCCP action in San Diego County Superior Court for 90 days,
4 including claims against third parties. On August 23, 2005, Judge Rakoff entered a stipulation that
5 had been negotiated and signed by Debtors-in-Possession, the Committee, and the third parties,
6 staying the MDL Ephedra Actions for 90 days. On September 7, 2005, Judge Hargrove granted
7 Debtors-in-Possession's motion for a preliminary injunction enjoining all proceedings in all
8 Ephedra Actions for a period of 90 days.

9 On September 16, 2005, Debtors-in-Possession filed the current petition under 28 U.S.C.
10 § 157(b)(5) for an order determining that all PITWD claims shall be tried in this District Court
11 rather than in courts scattered around the country. Debtors-in-Possession do not seek immediate
12 transfer of the 200 or so MDL Actions pending before the Southern District of New York, but
13 instead propose that those cases remain in New York until such time as they are ready for
14 resolution by trial. Debtors-in-Possession ask that the remaining 162 or so non-MDL cases
15 pending throughout the country, including the 90 JCCP cases before the San Diego County
16 Superior Court, be forthwith transferred to this Court.

17 Discussion

18 Pursuant to 28 U.S.C. § 157, "[t]he district court shall order that personal injury tort and
19 wrongful death claims shall be tried in the district court in which the bankruptcy case is pending,
20 or in the district court in the district in which the claim arose, as determined by the district court in
21 which the bankruptcy case is pending." The purpose of § 157(b)(5) is "to centralize the
22 administration of the [bankruptcy] estate and to eliminate the 'multiplicity of forums for the
23 adjudication of parts of a bankruptcy case.'" A.H. Robins Company, Inc. v. Piccinin, 788 F.2d
24 994, 1011 (4th Cir. 1986) (quoting 130 Cong. Rec. H.7492, June 29, 1984, *reprinted in* 1984
25 U.S.C.C.A.N. at 579); *see also In re Pan Am Corp.*, 16 F.3d 513, 516 (2d Cir. 1994) ("Congress
26 enacted section 157(b)(5) to expand the district court's venue-fixing powers with an eye to
27 centralizing the adjudication of a bankruptcy case."). By centralizing cases under § 157(b)(5), the
28 court "increases the debtor's odds of developing a reasonable plan of reorganization which will

1 'work a rehabilitation of the debtor and at the same time assure fair and non-preferential resolution
 2 of the . . . claims.'" In re Dow Corning Corp., 86 F.3d 482, 496 (6th Cir. 1996) (quoting A.H.
 3 Robins Co., 788 F.2d at 1011). The district court's power to fix venue under § 157(b)(5) also
 4 extends to cases pending against nondebtor defendants which are "related to" a debtor's
 5 bankruptcy proceedings pursuant to 28 U.S.C. § 1334(b). In re Dow Corning Corp., 86 F.3d at
 6 497.

7 Although the language of § 157(b)(5) appears to impose upon the district court a mandatory
 8 duty to fix venue, the court must first determine whether it is appropriate to abstain pursuant to 28
 9 U.S.C. § 1334(c). In re Dow Corning, 86 F.3d at 497 (citing In re Pan Am Corp., 950 F.2d 839,
 10 844 (2d Cir. 1991)). Section 1334(c)(1) provides as follows: "[n]othing in this section prevents a
 11 district court in the interests of justice, or, in the interest of comity with State courts or respect for
 12 state law, from abstaining from hearing a particular proceeding arising under title 11 or arising in
 13 or related to a case under title 11." In determining whether or not to abstain from transferring
 14 venue under § 157(b)(5), courts should consider twelve factors:

- 15 (1) the effect or lack thereof on the efficient administration of the estate if a Court
- 16 (2) recommends abstention,
- 17 (3) the extent to which state law issues predominate over bankruptcy issues,
- 18 (4) the difficulty or unsettled nature of the applicable law,
- 19 (5) the presence of a related proceeding commenced in state court or other bankruptcy
- 20 (6) court,
- 21 (7) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- 22 (8) the degree of relatedness or remoteness of the proceeding to the main bankruptcy
- 23 (9) case,
- 24 (10) the substance rather than form of an asserted "core" proceeding,
- 25 (11) the feasibility of severing state law claims from core bankruptcy matters to allow
- 26 (12) judgments to be entered in state court with enforcement left to the bankruptcy court,
- 27 (13) the burden on [the bankruptcy court's] docket,
- 28 (14) the likelihood that the commencement of the proceeding in bankruptcy court
- involves forum shopping by one of the parties,
- the existence of a right to a jury trial, and
- the presence in the proceeding of nondebtor parties.

24 In re Pacific Gas & Electric Co., 279 B.R. 561, 569-70 (N.D. Cal. 2002) (quoting Christensen v.
 25 Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1999)). Where a proper request for transfer is
 26 made under § 157(b)(5), "[t]ransfer should be the rule, abstention the exception." In re Pan Am
 27 Corp., 950 F.2d at 845; see also In re Twin Laboratories, Inc., 300 B.R. 836, 841 (S.D.N.Y. 2003).

28 Despite the issues raised by the San Diego Superior Court plaintiffs Harris and Kreutzer, as

1 well as the doctor defendants in the Gyani v. Metabolife Int'l Inc. case pending before the Southern
2 District of New York, the Court concludes that it is in the best interests of all involved parties to
3 grant the Debtors-in-Possession's motion under § 157(b)(5). This case demonstrates the need to
4 centralize the administration of all PITWD claims against the bankruptcy estate in a single district
5 court. Like the Dow Corning breast implant claims addressed in the In re Dow Corning Corp.
6 case, the Dalkon Shield IUD claims addressed in the A.H. Robins Company, Inc. case, the claims
7 resulting from the crash of Pan Am flight 103 in the In re Pan Am. Corp. case, and the similar
8 ephedra claims raised in In re Twin Laboratories, Inc., the claims of the 362 PITWD plaintiffs who
9 have filed suits against Metabolife and Alpine Health need to be administered by a central court.
10 As the Fourth Circuit pointed out many years ago in the A.H. Robins Company, Inc. case, "[t]he
11 'single focal point' of this proceeding [the chapter 11 bankruptcy] is the development of a
12 reasonable plan of reorganization for the debtor, one which will work a rehabilitation of the debtor
13 and at the same time assure fair and non-preferential resolution of the [ephedra] claims." 788 F.2d
14 at 1012. Although a couple of objections have been filed by individual claimants in opposition to
15 the current petition, "[i]f the claimants as a whole are to realize reasonable compensation for their
16 claims, it is obviously in the interest of the class of claimants as a whole to obviate the tremendous
17 expense of trying these cases separately." Id. at 1013

18 The Court further concludes, that the opposing parties have not demonstrated that the
19 balance of factors set forth in In re Pacific Gas & Electric Co. favors abstention. With regard to
20 the JCCP actions before the San Diego County Superior Court,² the Court concludes that the
21 balance of factors favors the exercise of jurisdiction by this Court. On September 27, 2005, the
22 non-debtor defendants removed 20 of the JCCP cases to the Southern District of California
23 Bankruptcy Court. With only a couple exceptions, the remaining JCCP actions have been filed
24 solely against the Debtors-in-Possession. Because of the automatic stay under the bankruptcy
25 code, those cases will remain stayed indefinitely pending confirmation of a plan by the bankruptcy
26

27 ² The Court notes that although counsel representing the JCCP Plaintiffs' Coordinating
28 Committee appeared at the hearing, the Committee did not file a written opposition or abstention
motion. No other Superior Court plaintiff filed a written opposition to the petition or motion for
abstention.

1 court. The Kreutzer and Harris plaintiffs argue that transfer of the JCCP actions to this Court will
2 result in a monumental waste of judicial resources because much of the pretrial preparation of
3 these cases has been completed and they are simply awaiting trial. No trial will occur in those
4 cases, however, while the bankruptcy is pending. Therefore, the transfer of the actions to this
5 Court will not prejudice the rights of those plaintiffs. Furthermore, although the Kreutzer and
6 Harris plaintiffs argue that there are novel issues of California causation law to be resolved in these
7 cases, the Court believes these legal issues are not particularly difficult or unsettled. In addition,
8 the state law issues do not predominate over the bankruptcy issues. The PITWD proceedings
9 throughout the country are directly related to the bankruptcy case because the bankruptcy was
10 precipitated, in large part, by the tort claims. It is not feasible to sever the PITWD claims from the
11 core bankruptcy matters because the bankruptcy court cannot confirm a plan for administration of
12 the estate without considering the impact of these claims. The Court notes that the assets of
13 Debtor-in-Possession are pending sale, such that there will be a finite pool of money from which
14 claims can be paid. Transferring venue for trial to this Court will ensure that this pool can be fairly
15 distributed in accordance with the bankruptcy plan. The Court does not find that the initiation of
16 the bankruptcy proceedings constitutes forum shopping because the Debtors-in-Possession are
17 California corporations with their principal places of business within this District. Finally,
18 although there would be some burden on this Court associated with the transfer of venue under §
19 157(b)(5), that burden is largely ameliorated by leaving the pending MDL Actions in the Southern
20 District of New York. Therefore, upon consideration of all the factors, the Court concludes that
21 the balance tips strongly in favor of the exercise of jurisdiction by this Court under § 157(b)(5) as
22 to all of the JCCP Superior Court cases, and against abstention as requested by San Diego Superior
23 Court plaintiffs Harris and Kreutzer.

24 With regard to the Gyani case doctor defendants, these parties appear to raise valid
25 arguments regarding whether the malpractice claims against them should be severed from the MDL
26 proceeding and remanded to the originating Court. Those issues, however, need to be raised by
27 noticed motion to the appropriate court or to the Panel on Multidistrict Litigation that originally
28 ordered that the case be made part of the MDL Action. Because this Court is not ordering the

1 immediate transfer of the MDL Actions, the Gyani doctor defendants can proceed with such
2 motion in due course, prior to any final transfer of the case to this Court for trial.

3 With regard to the remaining 73 or so non-MDL, non-JCCP cases, the Court also finds it
4 appropriate to exercise jurisdiction under § 157(b)(5). There are currently PITWD cases pending
5 against the Debtors-in-Possession in the state and federal courts in Virginia, Texas, Pennsylvania,
6 Minnesota, Maryland, Washington, Missouri, Massachusetts, Florida, New Jersey, Ohio,
7 Oklahoma, Georgia, Illinois, Arkansas, Louisiana, Kansas, Connecticut, Utah, Mississippi,
8 Arizona, North Carolina, Alabama, and Nevada. The transfer of these cases under § 157(b)(5) will
9 promote the efficient administration of the bankruptcy estate by eliminating the need for Debtors-
10 in-Possession to litigate these claims throughout the country. In particular, although these cases
11 are currently under a stay imposed by Chief Bankruptcy Judge Hargrove, at the hearing before this,
12 Court there was some indication that there continues to be some ongoing issues in these
13 proceedings. Transfer of the cases to this Court, in the district in which the bankruptcy
14 proceedings are pending, will ensure that the interests of the PITWD claimants, and the Debtors-
15 in-Possession, and the other claimants of the bankruptcy estate, are fully and fairly protected.

16 In the “response” filed by the Plaintiffs’ Coordinating Committee (“PCC”) of the Ephedra
17 MDL Action, the PCC alternatively asks the Court to transfer all of the PITWD claims to the
18 United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1412.
19 Besides the fact that the “response” is in fact a grossly untimely motion for affirmative relief,
20 § 1412 also does not provide the relief sought by the PCC. Section 1412 provides that “[a] district
21 court may transfer a case or proceeding under title 11 to a district court for another district, in the
22 interest of justice or for the convenience of the parties.” As an initial matter, § 1412 allows only
23 the court in which a suit is pending to transfer such case to another court. A.H. Robins Co., 788
24 F.2d at 1011. In particular, it is ordinarily for the bankruptcy court to determine whether such a
25 transfer of venue is appropriate. Id.; see also Calumet Nat’l Bank v. Levine, 179 B.R. 117, 121
26 (N.D. Ind. 1995). Because the other cases that the PCC urges the Court to transfer under § 1412
27 are not currently before this Court, this Court lacks jurisdiction to transfer them to the S.D. New
28 York. In addition, PITWD claims form a special class within the realm of bankruptcy law, and

1 § 157(b)(5) is the proper section governing the determination of venue as to such claims. *Id.*
2 Under § 157(b)(5), this Court can order that PITWD claims be tried only in this Court or in the
3 court in which the claim arose. The Southern District of New York, as an MDL transferee court,
4 does not fit in either of those categories.

5 **Conclusion**

6 For the reasons set forth herein, the Debtors-in-Possession's petition under 28 U.S.C.
7 § 157(b)(5) is GRANTED. Pursuant to § 157(b)(5), the Court orders that this is the appropriate
8 venue for trial of PITWD cases against the Debtors-in-Possession. Counsel for the Debtors-in-
9 Possession shall forthwith submit a proposed order to the Court providing for the immediate
10 transfer of venue all of the non-MDL Ephedra Actions against them to this Court. Upon receipt of
11 the case files by the Clerk of the Court, a new case number shall be assigned to each case. Such
12 cases shall thereafter be assigned according to the low number rule, S.D. Cal. Local Civil Rule
13 40.1(h). The MDL Actions shall remain in the United States District Court for the Southern
14 District of New York until such time, if any, that trial of the actions becomes appropriate. Trial
15 shall take place in the Southern District of California. All requests for relief regarding pretrial
16 management of non-MDL Actions are denied without prejudice.

17 **IT IS SO ORDERED.**

18
19 Dated: Nov. 2, 2005


HON. IRMA E. GONZALEZ, Chief Judge
United States District Court
Southern District of California

20
21
22 cc: Magistrate Judge Brooks
23 Counsel of Record
24
25
26
27
28

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re: TWIN LABORATORIES INC. and :
TWINLAB CORPORATION, :

Debtors, :

DAVID ALCANTAR, et al., :

Plaintiffs, :

-v- :

TWIN LABORATORIES INC., et al., :

Defendants. :
----- X

M-47 (JSR)

OPINION AND ORDER

JED S. RAKOFF, U.S.D.J.

Twin Laboratories Inc. and Twinlab Corporation, which are Debtors in consolidated Chapter 11 proceedings before the United States Bankruptcy Court for the Southern District of New York, move in the District Court, pursuant to 28 U.S.C. §157(b)(5), to transfer to this Court thirty-five personal injury cases pending against Debtors (and therefore presently stayed) in other jurisdictions throughout the country.¹ The lawsuits all relate

¹ Although no party to the instant motion has asserted that the motion should have been referred to the Bankruptcy Court by virtue of the standing referral order in this District, this Court, in an excess of caution, hereby withdraws any such putative reference of this motion. Cf. In re Pacific Gas & Electric Company, 279 B.R. 561 (N.D.Cal. 2002) (claiming that the Bankruptcy Court has coordinate power to decide such motions). In addition, the Court hereby withdraws the underlying reference of the Chapter 11 proceedings to the limited extent necessary to avoid any interference with the implementation of this order or of any proceedings arising therefrom. See 28 U.S.C. § 157(d) ("The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown.") The Court will

to injuries allegedly resulting from the ingestion of dietary supplements manufactured by the Debtors, most of which contained ephedra.

Section 157(b)(5) of Title 28 distinguishes personal injury claims from all other lawsuits related to a bankruptcy by providing, in seemingly mandatory language, that:

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(emphasis supplied). The Second Circuit has determined, however, that this section must be read in tandem with subsection 1334(c)(1) of the same title, which provides that:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

Although the abstention permitted by subsection 1334(c)(1) applies on its face only to "this section" (i.e., to section 1334), the Second Circuit has read subsection 1334(c)(1) "to codify judicial abstention doctrines" of more general applicability. In re Pan American Corp., 950 F.2d 839, 845 (2d Cir. 1991), including applicability to transfers under section

work closely with the Bankruptcy Court so that proceedings in the cases hereby ordered transferred - which remain stayed pending further order of this Court - will be coordinated with proceedings in the underlying bankruptcy.

157(b)(5), see id. Thus, the Second Circuit, like several other circuits, has held that "[a] motion under section 157(b)(5), therefore, requires an abstention analysis." Id. at 844.²

Nonetheless, in deference to the seemingly mandatory language of § 157(b)(5) and its obvious purpose of giving particular priority to the centralization of bankruptcy-related personal injury claims in a single forum, the Second Circuit has further instructed district courts that, so far as cases falling within the purview of that section are concerned, "[t]ransfer should be the rule, abstention the exception." Id. at 845. Accordingly, even though district courts in deciding whether or not to abstain in a bankruptcy context have frequently invoked a 12-factor test, see, e.g., In re WorldCom, Inc. Securities Litigation, 293 B.R. 308, 332 (S.D.N.Y. 2003), that test must here be applied with caution, taking account of the strong legislative presumption favoring transfer under § 157(b)(5): for in this context, perhaps even more than elsewhere, federal courts have a "virtually unflagging obligation ... to exercise the jurisdiction given them." Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976).

The twelve factors are:

² For this reason, apparently, some of the opponents of the instant motion have styled their opposition as a cross-motion for abstention. Technically, however, no cross-motion is necessary to raise abstention as a ground for denying transfer.

JUDGE RIKOFF

F.05

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable state law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden [on] the court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re WorldCom, Inc. Securities Litigation, 293 B.R. at 332,

quoting In re Masterwear Corp., 241 B.R. 511, 520 (Bankr.

S.D.N.Y. 1999). On their face, some of these factors (s.g., the seventh factor, involving the difference between "core" and "non-core" proceedings) are more directly applicable to other situations than to a proposed transfer under § 157(b)(5). Nevertheless, the Court has carefully considered each of these factors and finds that, of those even arguably applicable to the instant motion, the majority of such factors - such as the first, third, fourth, fifth, eighth, eleventh, and (to a lesser extent) twelfth - favor transfer.

Conversely, only the second factor - the predominance of state law issues over bankruptcy issues - clearly favors abstention. But after extensive oral argument on this point (and on related considerations of state policy), see transcript

10/17/03, the Court is satisfied that none of the state law issues here involved are difficult, unsettled, or unfamiliar to a federal court that, thanks to diversity jurisdiction, has its share of state-law personal injury cases. Nor, in any event, can the predominance of state law issues be given decisive effect in analyzing transfer under § 157(b)(5), for the very subject matter of that section - personal injury claims - is almost always governed by state law, and yet Congress, in enacting § 157(b)(5), singled out such claims as the very ones it wanted transferred. Thus, application of the 12-factor test strongly favors granting the instant motion.

The Court has also considered the other issues raised by opponents of the motion but finds them wholly lacking in merit.³

³ Brief mention should perhaps be made of the creative efforts made by counsel for the plaintiffs in Lugene Parsley et al. v. Metabolife Int'l, Inc., et al., Dkt. No. 03-L-537 (St. Clair County, Illinois) to avoid federal jurisdiction. The proposed class in that action consists of "[a]ll persons in the State of Illinois who purchased ephedra products from [Twinlabs and the two other companies]," Parsley Complaint ¶ 17. The gravamen of the complaint is that Twinlabs and the other defendants manufactured ephedra-based products that posed a serious risk of physical injury and that defendants "failed to adequately and sufficiently warn of serious side effects that were associated with the use of their ephedra-based products including, but not limited to, cardiac complications, stroke, seizure, elevated blood pressure, tachycardia, heart palpitations, irregular heartbeats, dizziness, and/or severe headache," *id.* at ¶ 15. Yet (in seeming derogation of class counsel's fiduciary duties to the class) the complaint not only attempts to avoid diversity jurisdiction by "explicitly disclaim[ing] damages in excess of \$74,999.99...for each Class Member," *id.* at ¶ 11, but also attempts to avoid transfer under § 157(b)(5) by purporting to expressly exclude "all claims for

Accordingly, the Debtors' motion to transfer is granted, and opponents' motions for abstention are denied.⁴ Counsel for the Debtors is hereby directed to take whatever steps are necessary, in coordination with counsel for the parties in the respective actions being transferred, to (a) effect such transfers as quickly as possible, and (b) coordinate with the Clerk of the Court of the Southern District of New York so that all the transferred cases will be marked as related, assigned to the undersigned, and, in addition to retaining individual captions, ultimately be given a common caption of "In re Twinlabs Personal Injury Cases," with a corresponding civil docket number.

personal injury or wrongful death," *id.* at ¶ 17. Yet the first five counts of the six-count complaint are the standard product liability tort claims for a defective drug, to wit, strict liability in manufacturing and labeling, negligence, and breach of express and implied warranties, and seek unspecified damages for the unspecified "harm" directly and proximately caused by ephedra's alleged side-effects and the failure to warn of same. Despite being challenged by Debtors, nowhere in their motion papers do counsel for the Parsley plaintiffs identify what such "harm" consists of other than personal injuries and the risk thereof. While a plaintiff may be "master of his complaint" in some contexts, palpably specious "artful pleading" of the kind presented by Parsley cannot serve to overcome (or leave to state courts to effectuate) the very strong federal policy of §157(b)(5) favoring transfer to federal court of personal injury actions related to a bankruptcy.

⁴Although § 157(b)(5) permits transfer either to the district court in which the bankruptcy case is pending or to the district court in the district in which the claim arose, neither side here argues for the latter alternative, since the claims arose in numerous districts. Thus, in this case, the purposes of § 157(b)(5) can only be achieved by transfer to this Court.

JUDGE RAKOFF

P.23

Once transfer is completed, Debtors' counsel should promptly advise the Court in writing, so that the Court can convene a status conference and coordinate with the Bankruptcy Court as to further proceedings in these cases. Until then, all the cases affected by this order remain stayed.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
November 3, 2003

EXHIBIT C

DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

Docket No. _____
(Related to Docket No. 1:13-md-2419-FDS)

NOTICE OF REMOVAL AND TRANSFER
PURSUANT TO 28 U.S.C. § 157(b)(5)

(Transferred from: [NAME OF STATE COURT AND STATE COURT CASE NO.]

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY CASES

Docket No. _____
(Related to Master Docket No. 12-12052-FDS)

1. Pursuant to 28 U.S.C. § 157(b)(5), this case is removed and transferred from the [NAME OF STATE COURT], Case No. [STATE COURT CASE NUMBER] (the “State Court Action”) to this Court. (A copy of the Order is attached as Exhibit A.)

3. A Notice of Filing of Notice of Removal and Transfer Pursuant to 28 U.S.C. § 157(b)(5) promptly is being filed with the Clerk of Courts in the State Court Action and provided to all parties of record.

For the foregoing reasons, this action is hereby removed and transferred from the
[NAME OF STATE COURT] to this Honorable Court.

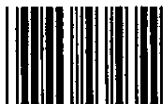
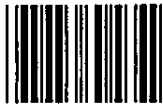
Dated: [DATE OF REMOVAL]
[LOCATION]

Respectfully submitted,

[REMOVING COUNSEL]

Attorneys for [REMOVING DEFENDANT]

EXHIBIT D



JAH 12/6/05 15:38
3:05-CV-01802 METABOLIFE INTL INC V.
31
O.

05 DEC -5 PM 2: 35

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Signature]
DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re
METABOLIFE INTERNATIONAL, INC.
and ALPINE HEALTH PRODUCTS, LLC,
Debtors/Petitioners,

CASE NO. 05cv1802-IEG(RBB)

Supplemental Order Regarding
Transfer of Cases Pursuant to
28 U.S.C. § 157(b)(5)

On November 3, 2005, the Court granted the Debtors-in-Possession's petition under 28 U.S.C. § 157(b)(5) and ordered that this Court is the appropriate venue for trial of personal injury tort and wrongful death cases against the Debtors-in-Possession. Debtors-in-Possession have provided the Court with a list identifying all Ephedra Actions which were not part of the MDL proceeding as of the date of the filing of the Metabolife and Alpine Health bankruptcy petitions on June 30, 2005. Those actions are identified in the attached list labeled Exhibit A. Debtors-in-Possession have also identified 24 of those actions which were transferred to the MDL following the filing of the bankruptcy petitions and prior to this Court's November 3, 2005 order. Those actions are identified in the attached list labeled Exhibit B. Finally, Debtors-in-Possession have identified those remaining cases that are part of the Ephedra MDL Action in the Southern District of New York.

Based upon the Court's November 3, 2005 order, and to effect transfer of the relevant cases, the Court hereby orders as follows:

31¹

ENTERED ON 12/6/05

05cv1802


1. Each of the non-MDL Ephedra Actions, as identified on Exhibit A hereto shall be transferred forthwith to this Court, with the exception of those cases listed on Exhibit B, which were transferred to the MDL prior to the entry of the Court's November 3, 2005 order. Counsel for the Debtors-in-Possession shall take such action as is necessary to transfer venue of the identified non-MDL Ephedra Actions to this Court.
2. The record for each of the transferred actions shall be transmitted directly to the Clerk of Court, United States District Court for the Southern District of California, 880 Front Street, Room 4293, San Diego, CA 92101. Upon receipt of the case files by the Clerk of the Court, a new case number shall be assigned to each action. The Clerk of Court shall directly assign such cases District Judge Barry Ted Moskowitz and Magistrate Judge Jan M. Adler as related to Case No. 02cv1671-BTM(JMA).
3. All MDL Actions, as identified in the attached lists labeled Exhibits B and C, shall remain in the United States District Court for the Southern District of New York until such time, if any, that trial of the actions becomes appropriate. Counsel for the Debtors-in-Possession, however, shall forthwith provide notice of the Court's November 3, 2005 order to counsel for plaintiffs in the MDL Action.

The Clerk shall terminate this case.

IT IS SO ORDERED.

Dated:

12/2/05


HON. IRMA E. GONZALEZ, Chief Judge
United States District Court
Southern District of California

cc: Judge Moskowitz
Magistrate Judge Brooks
Magistrate Judge Adler
Counsel of Record

| Non-MDL Ephedra Actions | | |
|-------------------------|----------------------------------------------|-------------------|
| As of Petition Date | | |
| | | |
| | | |
| Plaintiff | Jurisdiction* | Civil Action No. |
| Anderson, Tony | W.D. Wash. (Tacoma) | 3:05-cv-05438-JKA |
| Armbrister, Terrill | Bankr. S.D. Cal. | Adv. 05-90421 |
| Bagley, Terri | Bankr. S.D. Cal. | Adv. 05-90378 |
| Baity, Joseph | D. Minn. | 0:05-cv-00936 |
| Berckman, Phillip Shane | JCCP, Sup. Ct.; San Diego County, California | Unavailable |
| Berry, Steven | JCCP, Sup. Ct.; San Diego County, California | 4360-00088 |
| Bierig, Collette | JCCP, Sup. Ct.; San Diego County, California | 4360-00083 |
| Bolds, Marvin | JCCP, Sup. Ct.; San Diego County, California | 4360-00110 |
| Bonnette, J. | JCCP, Sup. Ct.; San Diego County, California | 4360-00029 |
| Bonnette, Robert | JCCP, Sup. Ct.; San Diego County, California | 4360-00002 |
| Bower, Barbara | Bankr. S.D. Cal. | Adv. 05-90424 |
| Braner, Gloria | Bankr. S.D. Cal. | Adv. 05-90425 |
| Brenton, Ashleigh | JCCP, Sup. Ct.; San Diego County, California | 4360-00003 |
| Bridges, Jeff | S.D. Tex. (Houston) | 4:03-cv-03847 |
| Broadus, Ronnie | JCCP, Sup. Ct.; San Diego County, California | 4360-00038 |
| Brock, Jacqueline | Bankr. S.D. Cal. | Adv. 05-90414 |
| Brown, Connie | S.D. Cal. | 05-cv-1300 |
| Brown, David | JCCP, Sup. Ct.; San Diego County, California | 4360-00050 |
| Brown, Debra | S.D. Tex. | 4:03-cv-05313 |
| Brown, Kathleen | W.D. Mo. | 05-481-cv-W-FJG |
| Brown, Samantha | JCCP, Sup. Ct.; San Diego County, California | 4360-00030 |
| Bupte, Gerald | S.D. Tex. (Galveston) | 3:05-cv-00518 |
| Byrne, Daniel | E.D. Mo. | 1:05-cv-00076CCDP |
| Cain, John Robert | DNJ (Trenton) | 3:04-cv-00686-GEB |
| Callahan, Jill | JCCP, Sup. Ct.; San Diego County, California | 4360-00055 |
| Camera, Kimberly | JCCP, Sup. Ct.; San Diego County, California | 4360-00031 |
| Carss, Patty | JCCP, Sup. Ct.; San Diego County, California | 4360-00053 |
| Carter, James | W.D. Mo. (Kansas City) | 4:05-cv-00527-FJG |

| Plaintiff | Jurisdiction* | Civil Action No. |
|-----------------------|-----------------------------------------------|-------------------|
| Casillas, Lilia | JCCP, Sup. Ct.; San Diego County, California | 4360-00074 |
| Cate, Charles | JCCP, Sup. Ct.; San Diego County, California | 4360-00051 |
| Chalvire, Grace | JCCP, Sup. Ct.; San Diego County, California | 4360-00032 |
| Chaney, Dennis | Bankr. S.D. Cal. | Adv. 05-90416 |
| Clark, Max | S.D. Tex. (Houston) | 4:05-cv-03351 |
| Colbert, Aisha | JCCP, Sup. Ct.; San Diego County, California | 4360-00089 |
| Corrasco, Angie | JCCP, Sup. Ct.; San Diego County, California | Unavailable |
| Crisp, Dorothy | S.D. Tex. (Houston) | 4:04-cv-02226 |
| Cunningham, Olivia | Cir. Ct.; St. Louis City, Missouri | Unavailable |
| Davis, Wendy | Bankr. S.D. Cal. | Adv. 05-90415 |
| Dean, Jack E. | JCCP, Sup. Ct.; San Diego County, California | 4360-00105 |
| Deaver, Michelle | JCCP, Sup. Ct.; San Diego County, California | 4360-00028 |
| Doll, Kim | JCCP, Sup. Ct.; San Diego County, California | 4360-00056 |
| Doucette, Eugene | Bankr. S.D. Cal. | Adv. 05-90428 |
| Dropp, Theodore | Cook County, Illinois | 03-L-8635 |
| Durbin, Mark | W.D. Mo. (Kansas City) | 4:05-cv-00482-DW |
| Durham, Travis | Bankr. S.D. Cal. | Adv. 05-90426 |
| Dye, Lewis | JCCP, Sup. Ct.; San Diego County, California | 4360-00005 |
| Ealy, Tyrescia | Pulaski County, Arkansas | CV-04-1195 |
| Emm, Mary | Sup. Ct.; San Diego, California | GIC831450 |
| Emmert, Janet | JCCP, Sup. Ct.; San Diego County, California | 4360-00058 |
| Foley, Susan | S.D. Fla. | 05-CV-80588 |
| Fontenot, Justin | JCCP, Sup. Ct.; San Diego County, California | 4360-00097 |
| Foster, Edward | N.D. Ill. | 05C 4759 |
| Fox, David | JCCP, Sup. Ct.; San Diego County, California | 4360-00081 |
| Franklin, Judy | Bankr. S.D. Cal. | Adv. 05-90429 |
| Friddle, Dee Dee | Bankr. S.D. Cal. | Adv. 05-90412 |
| Fuss, Sherry | E.D. Pa. | 2:05-cv-5151-LDD |
| Gawlak, Catherine | Cir. Ct.; 1st Jud. Dist.; Santa Rosa, Florida | 04000395CA |
| Gentry, Nona | Bankr. S.D. Cal. | Adv. 05-90418 |
| Green, Monica | JCCP, Sup. Ct.; San Diego County, California | Unavailable |
| Green, William | S.D.S.C. (Columbia) | 3:05-cv-02226-MDL |
| Hamm, Richard Douglas | JCCP, Sup. Ct.; San Diego County, California | Unavailable |

| Plaintiff | Jurisdiction* | Civil Action No. |
|-------------------------|----------------------------------------------|-----------------------|
| Hawkins, John | Bankr. S.D. Ill. | Adv. 05-03281 |
| Hollingsworth, Michelle | Sup. Ct.; San Diego, California | GIC820375 |
| Holster, Angela | Santa Rosa, Florida | 57-2002-CA-000148 |
| Howard, Stephen | D. Mass. | 1:05-cv-10872-DPW |
| Hunt, John | JCCP, Sup. Ct.; San Diego County, California | 4360-00071 |
| Hutchinson, Robert | Bankr. S.D. Cal. | Adv. 05-90419 |
| Jackson, Shelly | Bankr. S.D. Cal. | Adv. 05-90420 |
| Jarrett, Linda | Cir. Ct.; St. Louis County, Missouri | 04CC-004894 J CV |
| Jenkins, Opal | Bankr. E.D. Ark. (Helena Division) | Adv. 2:05-ap-01265 |
| Johnson, Jennifer | JCCP, Sup. Ct.; San Diego County, California | 4360-00006 |
| Johnson, Sandra | JCCP, Sup. Ct.; San Diego County, California | 4360-00100 |
| Johnson, Tina | Hillsborough County, Florida | 01-01-2145 |
| Karsky, Gloria | D. Minn. | 0:05-cv-00935-JMR-FLN |
| Keister, Diane | N.D. Ill. | 1:05-cv-02876 |
| Kern, Cynthia | Cir. Ct.; St. Louis County, Missouri | 05CC-000111 L CV |
| King, Charlene | JCCP, Sup. Ct.; San Diego County, California | 4360-00070 |
| King, Felecia | JCCP, Sup. Ct.; San Diego County, California | 4360-00108 |
| Kreutzer, Jerome | JCCP, Sup. Ct.; San Diego County, California | 4360-00001 |
| Kuchefski, Lydia | JCCP, Sup. Ct.; San Diego County, California | 4360-00027 |
| Kujat, Donald | Bankr. S.D. Cal. | Adv. 05-90427 |
| Lane, Richard | S.D. Fla. | 05-CV-60828 |
| Lanier, Monique | JCCP, Sup. Ct.; San Diego County, California | 4360-00063 |
| LeCamu, Gary | 113th Jud. Dist. Ct.; Harris County, Texas | 2003-16665 |
| Lee, Germelita | JCCP, Sup. Ct.; San Diego County, California | 4360-00098 |
| LeGrande, Candice | 10th Jud. Dist. Ct.; Galveston County, Texas | 03-CV-0748 |
| Lewis, Leatrice | W.D. Tex. (San Antonio) | 05-CV-948 |
| Linnell, Linda | JCCP, Sup. Ct.; San Diego County, California | 4360-00086 |
| Litten, Gregory | JCCP, Sup. Ct.; San Diego County, California | Unavailable |
| Llewellyn, Linda | Bankr. S.D. Cal. | Adv. 05-90411 |
| Longoria, Kelly | 17th Jud. Dist. Ct.; Tarrant County, Texas | 017-200288-03 |
| Lopez, Martha | JCCP, Sup. Ct.; San Diego County, California | 4166 |
| Loser, Otto | E.D.N.Y. | 1:05-cv-04587 |
| Lujan, Emily | Bankr. D. N.M. | Adv. 05-1212 |

| Plaintiff | Jurisdiction* | Civil Action No. |
|--------------------------|----------------------------------------------|-------------------|
| Maloney, Joann | Bankr. S.D. Cal. | Adv. 05-90422 |
| Markowski, King | N.D. Ohio (Cleveland) | 1:05-cv-01651-DAP |
| Martin, Gerald | W.D. Mo. | 5:05-cv-06050-ODS |
| Martin, Michelle | N.D. Ill. | 1:05-cv-03481 |
| Martinez, Gloria | JCCP, Sup. Ct.; San Diego County, California | 4360-00007 |
| Marty, Charlene | W.D. Mo. | 4:2005-cv-00461 |
| Mason, Pamela | E.D. Mo. | 4:05-cv-00913-DJS |
| Maxwell, Melissa | JCCP, Sup. Ct.; San Diego County, California | 4360-00048 |
| McAllister, Rhea | S.D. Tex. | 4:04-cv-02191 |
| McClain, Beverly | JCCP, Sup. Ct.; San Diego County, California | 4360-00049 |
| McClain, Johnny | N.D. Ala. | 2:01-cv-01801-WMA |
| McMeekin, Jason | S.D. Texas (Galveston) | 3:05-cv-00519 |
| Meadors, Audrey | JCCP, Sup. Ct.; San Diego County, California | 4360-00078 |
| Mejia, Ana | JCCP, Sup. Ct.; San Diego County, California | 4360- |
| Miles, Judith | W.D. Wash. (Seattle) | 2:03-cv-00225-BJR |
| Miller, Benita | E.D. Pa. | 2:05-cv-05153-MMB |
| Mireles, Kristen | JCCP, Sup. Ct.; San Diego County, California | 4360-00085 |
| Mitchell, Falayan | W.D. Ark. | 5:05-cv-05103-RTD |
| Morris, Dora | Bankr. S.D. Cal. | Adv. 05-90417 |
| Morris, Joyce | Jud. Dist. Ct.; Harris County, Texas | 2003-30290 |
| Moser, Bobby | N.D. Tex. (Fort Worth) | 4:2005-cv-00616 |
| Mullins, Patrick | N.D. Ill. | 1:05-cv-05579 |
| Naranjo, Ruben | JCCP, Sup. Ct.; San Diego County, California | 4360-00034 |
| Naugle, Patricia | Bankr. S.D. Cal. | Adv. 05-90413 |
| Neel, Marshall / Barbara | JCCP, Sup. Ct.; San Diego County, California | 4360-00102 |
| Neely, Hollis | W.D. Pa. | 2:05-cv-1350 |
| Norman, Sylvia | W.D. Mo. (Kansas City) | 4:05-cv-00483-ODS |
| Outlaw, Katonya | 20th Cir. Ct.; St. Clair County, Illinois | 05-L-28 |
| Overstreet, Phillip | N.D. Tex. | 3:05-1923 |
| Patterson, Pamela | E.D. Mo. (St. Louis) | 4:05-cv-00783-JCH |
| Paul, Duane | JCCP, Sup. Ct.; San Diego County, California | 4360-00084 |
| Perkins, Millicent | 3rd Jud. Cir. Ct.; Madison County, Illinois | 2004 L 001310 |
| Perlingiere, Vincent | Cir. Ct.; Sebastian County, Arkansas | CV 04-802 |

| Plaintiff | Jurisdiction* | Civil Action No. |
|-------------------------|-------------------------------------------------|-----------------------|
| Petty, Tonya | Monroe County, Mississippi | CV-02-514-BM |
| Pitts, Diane | JCCP, Sup. Ct.; San Diego County, California | 4360- |
| Polys, Karen | W.D. Mo. (Jefferson City) | 2:05-cv-04158-NKL |
| Porea, Selket | Parish of Orleans, Louisiana | 2000-6723 |
| Pringle, Shannon | 157th Jud. Dist. Ct.; Harris County, Texas | 2003-36345 |
| Raines, Ronald | Cir. Ct.; Pinellas County, Florida | 05-2532-CI-20 |
| Reynoso, Lydia | JCCP, Sup. Ct. San Diego County, California | 4360-00077 |
| Richards, Melissa | 14th Jud. Dist. Ct.; Dallas County, Texas | 03-05551-A |
| Rodriguez, Ruby | JCCP, Sup. Ct.; San Diego County, California | 4360-00008 |
| Saiter, Joseph | Santa Rosa County, Florida | 04-299-CA |
| Salser, Joseph | JCCP, Sup. Ct.; San Diego County, California | 4360-00101 |
| Santiago, Jose | 280th Jud. Dist. Ct.; Harris County, Texas | 2003-30849 |
| Scheffert, Marol | W.D. Ark. (Fayetteville) | 5:05-cv-05104-RTD |
| Scholwinski, Kimberly | 221st Jud. Dist. Ct.; Montgomery County, Texas | 02-11-07633-CV |
| Schultz, Sheila | Cook County, Illinois | 03L-9428 |
| Scott, Joan | JCCP, Sup. Ct.; San Diego County, California | 4360-00075 |
| Scrivener, Kevin | W.D. Mo. (Kansas City) | 4:05-cv-00462-FJG |
| Sheard, Michelle | JCCP, Sup. Ct.; San Diego County, California | 4360- |
| Shepherd, John | Cir. Ct.; Escambia County, Florida | 2004 CA 002238 "C" |
| Sides, Cynthia | 15th Jud. Dist. Ct., Palm Beach County, Florida | 2003-CA-006003 AG |
| Simmons, Bonnie | St. Clair County, Illinois | 04-L-0039 |
| Smith, Carol | Bankr. S.D. Cal. | Adv. 05-90423 |
| Smith, Dawn | D. Minn. | 0:05-cv-00937-JRT-FLN |
| Starks, Katherine | JCCP, Sup. Ct.; San Diego County, California | 4360-00021 |
| Strother, Scott | Independence County, Arkansas | CV-2004-294-4 |
| Suarez, Ana | Jud. Dist. Ct.; Harris County, Texas | 2004-19220 |
| Summer, Renee | JCCP, Sup. Ct.; San Diego County, California | 4360-00099 |
| Tatro-Romero, Christine | JCCP, Sup. Ct.; San Diego County, California | 4360-00009 |
| Taylor, Linda | 4th Jud. Dist. Ct.; Duval County, Florida | 04-CA-008537 |
| Thomas, Paul | JCCP, Sup. Ct.; San Diego County, California | 4360-00096 |
| Thompson, Linda | W.D. Mo. (St. Joseph) | 5:05-cv-06051-HFS |
| Thompson, Linda | W.D. Ark. (Fayetteville) | 5:05-cv-05102-RTD |
| Tims, Thomas | Drew County, Arkansas | CV-2004-0211-5 |

Exhibit A

| Plaintiff | Jurisdiction* | Civil Action No. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|-----------------------|
| Tornetta, Josephine | JCCP, Sup. Ct.; San Diego County, California | 4360-00010 |
| Tyler, Cindy | E.D. Pa. (Philadelphia) | 2:05-cv-02539-LS |
| Vertigans, Peter | JCCP, Sup. Ct.; San Diego County, California | 4360-00037 |
| Wallen, Donald | W.D. Ark. (Fayetteville) | 5:05-cv-05105-RTD |
| Warnecker, Micki | W.D. Mo. | 4:05-cv-00488-SOW |
| Watkins, Kathleen | Cir. Ct.; St. Louis County, Missouri | 04CC-002553 CV |
| Watters, Sandra | S.D. Ohio (Cincinnati) | 1:05-cv-00444-MHW |
| Watters, Sherri | S.D. Ohio | 1:05-CV444 |
| Webb, Beverly | D. Kan. (Kansas City) | 2:05-cv-02216-KHV-DJW |
| Welty, Rebecca | JCCP, Sup. Ct.; San Diego County, California | 4360-00025 |
| Whitfield, Derrell | Dist. of Nevada | 3:04-569 |
| Williams, Jerome | Parish of Orleans, Louisiana | 2003-05595 |
| Witneben, Constance H. | JCCP, Sup. Ct.; San Diego County, California | 4360-00104 |
| Wolter, Colleen | JCCP, Sup. Ct.; San Diego County, California | 4360-00036 |
| Wyrick, Teri & Randy | JCCP, Sup. Ct.; San Diego County, California | 4360-00022 |
| | | |
| * <u>Current</u> jurisdiction and court to be notified. Certain of these actions were pending in state court and were removed primarily by nondebtor defendants. | | |
| Due to incomplete information, this list may exclude an action that was pending on the Petition Date but was subsequently dismissed as to all parties, or include such action without noting the subsequent dismissal. | | |

Ephedra Actions Transferred to MDL Postpetition

As of 12/01/05

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Conditional Transfer Order No. | Date Conditional Transfer Order Issued | Effective Date of Transfer Order | Transferring Court | Civil Action No. (Transferring Court) |
|-------------------|---------------|--------------------------------|--------------------------------------|----------------------------------------------|----------------------------------------|---------------------------|------------------------------------------|
| Baity, Joseph | MDL; S.D.N.Y. | 1:05-cv-06333-JSR | 20 | 06/22/05 | 07/08/05 | D. Minn. | 0:05-cv-00936 |
| Karsky, Gloria | MDL; S.D.N.Y. | 1:05-cv-06332-JSR | 20 | 06/22/05 | 07/08/05 | D. Minn. | 0:05-cv-00935-JMR-FLN |
| Smith, Dawn | MDL; S.D.N.Y. | 1:05-cv-06334-JSR | 20 | 06/22/05 | 07/08/05 | D. Minn. | 0:05-cv-00937-JRT-FLN |
| Byrne, Daniel | MDL; S.D.N.Y. | 1:05-cv-006681-JSR | 21 | 06/28/05 | 07/14/05 | E.D. Mo. | 1:05-cv-00076CCDP |
| Durbin, Mark | MDL; S.D.N.Y. | 1:05-cv-06686-JSR | 21 | 06/28/05 | 07/14/05 | W.D. Mo. (Kansas City) | 4:05-cv-00482-DW |
| Martin, Gerald | MDL; S.D.N.Y. | 1:05-cv-06688-JSR | 21 | 06/28/05 | 07/14/05 | W.D. Mo. | 5:05-cv-06050-ODS |
| Norman, Sylvia | MDL; S.D.N.Y. | 1:05-cv-06687-JSR | 21 | 06/28/05 | 07/14/05 | W.D. Mo. (Kansas City) | 4:05-cv-00483-ODS |
| Marty, Charlene | MDL; S.D.N.Y. | 1:05-cv-06836-JSR | 22 | 07/07/05 | 07/25/05 | W.D. Mo. | 4:2005-cv-00461 |
| Mitchell, Falayan | MDL; S.D.N.Y. | 1:05-cv-06830-JSR | 22 | 07/07/05 | 07/25/05 | W.D. Ark. | 5:05-cv-05103-RTD |
| Polys, Karen | MDL; S.D.N.Y. | 1:05-cv-06834-JSR | 22 | 07/07/05 | 07/25/05 | W.D. Mo. (Jefferson City) | 2:05-cv-04158-NKL |
| Scheffert, Marol | MDL; S.D.N.Y. | 1:05-cv-06831-JSR | 22 | 07/07/05 | 07/25/05 | W.D. Ark. (Fayetteville) | 5:05-cv-05104-RTD |
| Scrivener, Kevin | MDL; S.D.N.Y. | 1:05-cv-06837-JSR | 22 | 07/07/05 | 07/25/05 | W.D. Mo. (Kansas City) | 4:05-cv-00462-FJG |
| Thompson, Linda | MDL; S.D.N.Y. | 1:05-cv-06829-JSR | 22 | 07/07/05 | 07/25/05 | W.D. Ark. (Fayetteville) | 5:05-cv-05102-RTD |
| Wallen, Donald | MDL; S.D.N.Y. | 1:05-cv-06832-JSR | 22 | 07/07/05 | 07/25/05 | W.D. Ark. (Fayetteville) | 5:05-cv-05105-RTD |
| Patterson, Pamela | MDL; S.D.N.Y. | 1:05-cv-07218-JSR | 25 | 07/21/05 | 08/08/05 | E.D. Mo. (St. Louis) | 4:05-cv-00783-JCH |
| Green, William | MDL; S.D.N.Y. | 1:05-cv-08402-JSR | 28 | 08/26/05 | 09/13/05 | S.D.S.C. (Columbia) | 3:05-cv-02226-MDL |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Conditional Transfer Order No. | Date Conditional Transfer Order Issued | Effective Date of Transfer Order | Transferring Court | Civil Action No. (Transferring Court) |
|------------------|---------------|--------------------------------|--------------------------------------|----------------------------------------------|----------------------------------------|-----------------------|------------------------------------------|
| Anderson, Tony | MDL; S.D.N.Y. | 1:05-cv-09061-JSR | 29 | 09/16/05 | 10/04/05 | W.D. Wash. (Tacoma) | 3:05-cv-05438-JKA |
| Brown, Debra | MDL; S.D.N.Y. | 1:04-cv-04279-JSR | 29 | 09/16/05 | 10/04/05 | S.D. Tex. | 4:03-cv-05313 |
| Foley, Susan | MDL; S.D.N.Y. | 1:05-cv-09055-JSR | 29 | 09/16/05 | 10/04/05 | S.D. Fla. | 05-CV-80588 |
| Lane, Richard | MDL; S.D.N.Y. | 1:05-cv-09054-JSR | 29 | 09/16/05 | 10/04/05 | S.D. Fla. | 05-CV-60828 |
| Markowski, King | MDL; S.D.N.Y. | 1:05-cv-09060-JSR | 29 | 09/16/05 | 10/04/05 | N.D. Ohio (Cleveland) | 1:05-cv-01651-DAP |
| Martin, Michelle | MDL; S.D.N.Y. | 1:05-cv-09056-JSR | 29 | 09/16/05 | 10/04/05 | N.D. Ill. | 1:05-cv-03481 |
| Warnecker, Micki | MDL; S.D.N.Y. | 1:05-cv-09058-JSR | 29 | 09/16/05 | 10/04/05 | W.D. Mo. | 4:05-cv-00488-SOW |
| Clark, Max | MDL; S.D.N.Y. | N/A | 31 | 10/18/2005 | 11/3/2005 | S.D. Tex. | 4:05-3351 |
| | | | | | | | |

| MDL Ephedra Actions | | | | |
|---------------------|---------------|--------------------------------|--------------------------|---------------------------------------|
| As of Petition Date | | | | |
| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
| Alaniz, Rosemary | MDL; S.D.N.Y. | 1:04-cv-04279-JSR | S.D. Tex. (Houston) | 4:03-cv-05316 |
| Alexander, Cicley | MDL; S.D.N.Y. | 1:05-cv-03026-JSR | E.D. Va. | 2:05cv00006 |
| Allen, Ronnie | MDL; S.D.N.Y. | 1:05-cv-02476-JSR | S.D. Tex. (Houston) | H-04-3659 |
| Anderson, Jacquelyn | MDL; S.D.N.Y. | 1:05-cv-00148-JSR | S.D. Miss. | 5:04-cv-00259 |
| Atwood, Channin | MDL; S.D.N.Y. | 1:05-cv-05986-JSR | E.D. Pa. | 2:05-cv-01151 |
| Ball, Teresa | MDL; S.D.N.Y. | 1:05-cv-03889-JSR | N.D. Ga. | 1:05-cv-00363 |
| Bartus, Louis | MDL; S.D.N.Y. | 1:04-cv-04275-JSR | S.D. Tex. (Houston) | 4:03-cv-03000 |
| Belew, Teresa | MDL; S.D.N.Y. | 1:05-cv-01020-JSR | N.D. Tex. (Fort Worth) | 4:04-cv-00821 |
| Bell, Bessie | MDL; S.D.N.Y. | 1:05-cv-01003-JSR | N.D. Ala. (Southern) | 2:04-cv-03000 |
| Bishop, Robert | MDL; S.D.N.Y. | 1:05-cv-05135-JSR | D. Md. (Baltimore) | 1:05-cv-00849 |
| Blevins, Mary | MDL; S.D.N.Y. | 1:05-cv-04716-JSR | E.D. Wash. | 2:05-cv-00037 |
| Bogart, James | MDL; S.D.N.Y. | 1:05-cv-02478-JSR | N.D. Okla. | 4:04-cv-00715 |
| Brandt, Joel | MDL; S.D.N.Y. | 1:05-cv-05978-JSR | D. Minn. | 0:05-cv-00480 |
| Brucato, Alicia | MDL; S.D.N.Y. | 1:05-cv-05976-JSR | D. Mass. (Boston) | 1:05-cv-10870 |
| Bryant, Jami | MDL; S.D.N.Y. | 1:05-cv-04711-JSR | E.D. Tex. (Beaumont) | 1:05-cv-0213 |
| Budwig, Laurence | MDL; S.D.N.Y. | 1:05-cv-05968-JSR | S.D. Cal. | 05-cv-847 |
| Bunger, Donna | MDL; S.D.N.Y. | 1:05-cv-04715-JSR | S.D. Tex. (McAllen Div.) | M-05-087 |
| Bunting, Marcia | MDL; S.D.N.Y. | 1:04-cv-09708-JSR | D.N.J. | 3:04-cv-04008 |
| Burney, William | MDL; S.D.N.Y. | 1:04-cv-04224-JSR | S.D. Fla. | 03-cv-62012 |
| Burton, Jennifer | MDL; S.D.N.Y. | 1:04-cv-04219-JSR | S.D. Cal. | 03-cv-00526 |
| Burton, William | MDL; S.D.N.Y. | 1:04-cv-06815-JSR | N.D. Ala. | CV-07-JEO-0574-S |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|-------------------|---------------|--------------------------------|-----------------------------|---------------------------------------|
| Busby, Shannon | MDL; S.D.N.Y. | 1:05-cv-00144-JSR | S.D. Miss. (Southern) | 1:04-cv-00754 |
| Cadet, Denise | MDL; S.D.N.Y. | 1:04-cv-04222-JSR | S.D. Fla. (Fort Lauderdale) | 03-60612 |
| Cagle, Hope | MDL; S.D.N.Y. | 1:05-cv-02994-JSR | W.D. Ark. (Fort Smith) | 2:05-cv-02011-JLH |
| Carr, Wanda | MDL; S.D.N.Y. | 1:04-cv-06944-JSR | N.D. Miss. (Delta Div.) | 2:03-cv-00265-MPM |
| Carsey, Roger | MDL; S.D.N.Y. | 1:05-cv-03906-JSR | S.D. Ohio (Columbus) | 2:05-cv-00133-JLG-TPK |
| Carter, Michael | MDL; S.D.N.Y. | 1:04-cv-04284-JSR | W.D. Va. (Danville) | 4:03-cv-00090-nkm-mfu |
| Castagne, Betty | MDL; S.D.N.Y. | 1:04-cv-04284-JSR | D. Mont. (Billings) | 1:04-cv-00129-RWA |
| Chapman, John | MDL; S.D.N.Y. | 1:05-cv-03001-JSR | E.D. Mich. (Detroit) | 2:04-cv-73841-RHC-RSW |
| Chezem, Cheryl | MDL; S.D.N.Y. | 1:04-cv-07363-JSR | N.D. Okla. (Tulsa) | 4:04-cv-00563-CVE-FHM |
| Ciocca, Dominica | MDL; S.D.N.Y. | 1:04-cv-05678-JSR | S.D.N.Y. | 1:04-cv-05678-JSR |
| Collins, Patricia | MDL; S.D.N.Y. | 1:05-cv-00154-JSR | S.D. Tex. (Houston) | 4:04-cv-3709 |
| Connolly, Karin | MDL; S.D.N.Y. | 1:04-cv-06833-JSR | S.D. Tex. (Houston) | 1:04-cv-00245-HJW |
| Crawford, Aubrey | MDL; S.D.N.Y. | 1:05-cv-04058-JSR | N.D. Ga. (Newnan) | 3:04-cv-00092-JTC |
| Crisp, Dorothy | MDL; S.D.N.Y. | 1:04-cv-07639-JSR | S.D. Tex. (Houston) | 4:04-cv-02095 |
| Davenport, David | MDL; S.D.N.Y. | 1:04-cv-07632-JSR | D. Minn. | 0:04-cv-02915-DWF-JSM |
| DeBlasis, Jacalyn | MDL; S.D.N.Y. | 1:04-cv-08208-JSR | S.D. Ohio (Columbus) | 2:04-cv-00542-ALM-NMK |
| Delk, Louis | MDL; S.D.N.Y. | 1:04-cv-06840-JSR | N.D. Tex. (Dallas) | 3:04-cv-00692 |
| Delva, Nicole | MDL; S.D.N.Y. | 1:05-cv-05981-JSR | D.N.J. | 1:05-cv-02135-JEI-JBR |
| Deng, Xiuhui | MDL; S.D.N.Y. | 1:05-cv-03027-JSR | W.D. Wash. (Seattle) | 2:05-cv-00170-MJP |
| Dodson, Carol | MDL; S.D.N.Y. | 1:04-cv-04265-JSR | E.D. Tex. (Beaumont) | 1:03-cv-0636 |
| Drewing, Stella | MDL; S.D.N.Y. | 1:04-cv-04274-JSR | S.D. Tex. (Galveston) | 3:03-cv-00700 |
| Dunham, Barbara | MDL; S.D.N.Y. | 1:05-cv-06821-JSR | D. Kan. (Kansas City) | 2:04-cv-02131-GTV-JPO |
| Edwards, Bobby | MDL; S.D.N.Y. | 1:04-cv-04264-JSR | E.D. Tex. (Beaumont) | 1:03-cv-00584-HC |
| Ehling, Deborah | MDL; S.D.N.Y. | 1:05-cv-05984-JSR | S.D. Ohio (Columbus) | 2:05-cv-00307-MHW-NMK |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|----------------------|---------------|--------------------------------|------------------------|-----------------------------------------------------|
| Emmons, Elaine | MDL; S.D.N.Y. | 1:05-cv-00145-JSR | S.D. Miss. (Southern) | 1:04-cv-00759-LG-RHW |
| Estedes, Susie | MDL; S.D.N.Y. | 1:05-cv-05972-JSR | E.D. La. (New Orleans) | 05-1670 |
| Evers, M. Timothy | MDL; S.D.N.Y. | 1:05-cv-00157-JSR | S.D. Tex. (Houston) | H-04-3973 |
| Farmer, Janice | MDL; S.D.N.Y. | 1:04-cv-08206-JSR | S.D. Miss. (Southern) | 1:04-cv-00680-LG |
| Ferrell, Horace J. | MDL; S.D.N.Y. | 1:04-cv-04231-JSR | N.D. Ill. (Chicago) | 1:04-cv-01581 |
| Floro, Lauren | MDL; S.D.N.Y. | 1:05-cv-03896-JSR | D. Mass. (Boston) | 1:05-cv-10048-REK |
| Foretich, Shirley | MDL; S.D.N.Y. | 1:05-cv-04713-JSR | N.D. Tex. (Fort Worth) | 4:05-cv-00155 |
| Foster, Kathy | MDL; S.D.N.Y. | 1:05-cv-01023-JSR | W.D. Tex. (Austin) | 04-cv-689 |
| Foussadier, Erika | MDL; S.D.N.Y. | 1:05-cv-04714-JSR | S.D. Tex. (Houston) | 4:05-cv-00937 |
| Freeman, Deborah | MDL; S.D.N.Y. | 1:05-cv-03905-JSR | N.D. Ohio (Cleveland) | 1:05-cv-00171-SO |
| Gaston, Charlene | MDL; S.D.N.Y. | 1:04-cv-03565-JSR | S.D.N.Y. | 1:04-cv-03565-JSR |
| Geist, Richard | MDL; S.D.N.Y. | 1:04-cv-04243-JSR | E.D. Mo. (Hannibal) | 2:04-cv-00011-DJS |
| Glen, Marsha | MDL; S.D.N.Y. | 1:04-cv-06823-JSR | E.D. La. (New Orleans) | 2:04-cv-01414-HGB [Consolidated w/ 2:00-cv-3513] |
| Glinn, Michael | MDL; S.D.N.Y. | 1:05-cv-03000-JSR | D. Kan. (Kansas City) | 2:04-cv-02602-KHV-DJW |
| Graves, Brenda | MDL; S.D.N.Y. | 1:05-cv-03881-JSR | N.D. Ala. (Middle) | 4:05-cv-00210-RBP |
| Gyani, Gupreet | MDL; S.D.N.Y. | 1:05-cv-02367-JSR | S.D.N.Y. | 1:05-2367 |
| Haberer, Sonja | MDL; S.D.N.Y. | 1:04-cv-04217-JSR | S.D. Cal. | 03-cv-524 |
| Hague, Alexander | MDL; S.D.N.Y. | 1:04-cv-05478-JSR | S.D. Tex. (Houston) | 4:03-cv-00215 |
| Hale, Terrice | MDL; S.D.N.Y. | 1:04-cv-05468-JSR | D. Kan. (Topeka) | 5:03-cv-04153-SAC-KG |
| Hart, Phyliss | MDL; S.D.N.Y. | 1:05-cv-03907-JSR | S.D. Tex. (Galveston) | 3:05-cv-00059 |
| Hayes, Joyce | MDL; S.D.N.Y. | 1:05-cv-01014-JSR | W.D. Mo. (St. Joseph) | 5:04-cv-06079-ODS |
| Hoefl, Danielle | MDL; S.D.N.Y. | 1:05-cv-04697-JSR | D. Minn. | 0:05-cv-00479-JNE-SRN |
| Hollerbach, Patricia | MDL; S.D.N.Y. | 1:04-cv-09709-JSR | D.N.J. | 3:04-cv-04117-GEB (Nutraquest case) |
| Holmer, Debbie K. | MDL; S.D.N.Y. | 1:05-cv-02477-JSR | W.D. Wash. (Seattle) | 2:04-cv-02294-JCC |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|-------------------|---------------|--------------------------------|-------------------------------|---------------------------------------|
| Hudson, Barbara | MDL; S.D.N.Y. | 1:05-cv-00143-JSR | N.D. Miss. (Eastern Division) | 1:04-cv-00317-GHD-JAD |
| Jungerich, Tammy | MDL; S.D.N.Y. | 1:04-cv-06824-JSR | W.D. Mich. (Kalamazoo) | 4:04-cv-00033-WAM |
| Jackson, Sheila | MDL; S.D.N.Y. | 1:04-cv-04277-JSR | S.D. Tex. (Houston) | 4:03-cv-03898 |
| Jarreau, Vicky | MDL; S.D.N.Y. | 1:04-cv-06828-JSR | S.D. Miss. (Jackson) | 3:04-cv-00171-HTW |
| Jones, Carolyn | MDL; S.D.N.Y. | 1:05-cv-04709-JSR | W.D.N.Y. (Rochester) | 6:05-cv-06081-CJS |
| Jones, Dorothy | MDL; S.D.N.Y. | 1:05-cv-03900-JSR | N.D. Miss. (Greenville) | 4:05-cv-00041-WAP-EMB |
| Kalman, Joann | MDL; S.D.N.Y. | 1:05-cv-05983-JSR | N.D. Ohio (Cleveland) | 1:05-cv-00919-KMO |
| Kasko, Richard | MDL; S.D.N.Y. | 1:04-cv-04261-JSR | E.D. Tex. (Beaumont) | 1:03-cv-00534-TH |
| King, Beverly | MDL; S.D.N.Y. | 1:05-cv-05966-JSR | N.D. Ala. | 2:04-cv-03468 WMA |
| Kintyht, Bernard | MDL; S.D.N.Y. | 1:04-cv-07633-JSR | D. Minn. | 0:04-cv-03089-DWF-JSN |
| Kress, Terry | MDL; S.D.N.Y. | 1:05-cv-03882-JSR | S.D. Cal. | 05-cv-218 |
| Kundrat, Robert | MDL; S.D.N.Y. | 1:04-cv-04249-JSR | N.D. Ohio | 1:03-cv-02231-DAP |
| Kutz, Jacqueline | MDL; S.D.N.Y. | 1:05-cv-02999-JSR | S.D. Ill. | 3:04-cv-00974-WDS-CJP |
| La Rosa, Tracey | MDL; S.D.N.Y. | 1:05-cv-01004-JSR | W.D. Ark. | 5:04-cv-05293-RTD |
| Lain, Courtney | MDL; S.D.N.Y. | 1:05-cv-02475-JSR | E.D. Tex. | 5:2004-cv-00275 |
| Lang, Joshua | MDL; S.D.N.Y. | 1:05-cv-02472-JSR | M.D. Ga. | 5:04-cv-00420-WDO |
| Langston, Larry | MDL; S.D.N.Y. | 1:04-cv-04212-JSR | N.D. Ala. | 2:02-cv-02352 LSC |
| Lebrun, Leonard | MDL; S.D.N.Y. | 1:05-cv-02995-JSR | D. Ariz. | CV 04 2668 |
| Lewicki, Francine | MDL; S.D.N.Y. | 1:05-cv-03883-JSR | D. Conn. | 3:05-cv-00278-JCH |
| Lewis, Bruce | MDL; S.D.N.Y. | 1:05-cv-01022-JSR | S.D. Tex. | 4:04-cv-04146 |
| Longoria, Leo | MDL; S.D.N.Y. | 1:04-cv-08317-JSR | Bankr. S.D. Tex. (McAllen) | 04-07011 (Adv. Proc.) |
| Lott, Karen | MDL; S.D.N.Y. | 1:04-cv-06834-JSR | S.D. Ohio | 2:04-cv-00062-EAS-NMK |
| Louis, Esther | MDL; S.D.N.Y. | 1:05-cv-05974-JSR | E.D. La. | 2:05-cv-01674-MVL-DEK |
| Lozano, Juan | MDL; S.D.N.Y. | 1:04-cv-04282-JSR | S.D. Tex. | 7:03-cv-00370 |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|-------------------------|---------------|--------------------------------|--------------------------|---------------------------------------|
| Maddox, Sharon | MDL; S.D.N.Y. | 1:05-cv-03014-JSR | W.D. Mo. | 4:04-cv-01161-FJG |
| Marlow, Joanne | MDL; S.D.N.Y. | 1:04-cv-02887-JSR | S.D. Cal. | 3:2001-cv-02306 |
| Marshall, Robert | MDL; S.D.N.Y. | 1:04-cv-04276-JSR | S.D. Tex. | 4:03-cv-03058 |
| Mauldin, Linda | MDL; S.D.N.Y. | 1:04-cv-06827-JSR | S.D. Miss. | 2:04-cv-00124-WHB |
| Mayfield-Fleming, Ellen | MDL; S.D.N.Y. | 1:05-cv-00142-JSR | E.D. Mich. | 2:04-cv-73842-AJT |
| Mazola, Rhea | MDL; S.D.N.Y. | 1:04-cv-05471-JSR | D. Minn. | 0:03-cv-05777-JNE-RLE |
| McClure, Cheryl | MDL; S.D.N.Y. | 1:04-cv-09357-JSR | N.D. Okla. | 4:04-cv-00716-JOE-SAJ |
| McCollom, Scott | MDL; S.D.N.Y. | 1:05-cv-04702-JSR | W.D. Mo. | 4:05-cv-00232-SOW |
| McGuire, Peggy | MDL; S.D.N.Y. | 1:04-cv-05476-JSR | E.D. Tex. | 1:04-cv-00132-RHC |
| Missino, Rebecca | MDL; S.D.N.Y. | 1:05-cv-05975-JSR | E.D. La. | 2:05-cv-01675-MVL-ALC |
| Morgan, Chad | MDL; S.D.N.Y. | 1:05-cv-03015-JSR | W.D. Mo. | 4:05-cv-00067-HFS |
| Morgan, Jaclyn | MDL; S.D.N.Y. | 1:04-cv-04233-JSR | N.D. Ill. | 1:04-cv-01589 |
| Morrissey, Darla | MDL; S.D.N.Y. | 1:05-cv-03892-JSR | N.D. Ill. | 3:05-cv-50027 |
| Motley, Charles | MDL; S.D.N.Y. | 1:05-cv-01013-JSR | W.D. Mo. | 4:04-cv-00784-DW |
| Murray, Roy | MDL; S.D.N.Y. | 1:04-cv-06817-JSR | S.D. Ala. | 1:03-cv-00826-BHC |
| Nash, Steven | MDL; S.D.N.Y. | 1:05-cv-04701-JSR | W.D. Mo. (Kansas City) | 4:04-cv-00207-ODS |
| Nelsen, Michelle | MDL; S.D.N.Y. | 1:05-cv-03023-JSR | D. Utah (Central) | 2:04-cv-01194-TS |
| Nichols, Cheryl | MDL; S.D.N.Y. | 1:04-cv-09352-JSR | W.D. Mo. (Kansas City) | 4:04-cv-00782-HFS |
| Nix, Diane | MDL; S.D.N.Y. | 1:05-cv-03902-JSR | S.D. Miss. (Hattiesburg) | 2:05-cv-00049-KS-JMR |
| Novosel, Nancy | MDL; S.D.N.Y. | 1:05-cv-04700-JSR | D. Minn. | 0:05-cv-00543-PAM-RLE |
| Oppenheim, James | MDL; S.D.N.Y. | 1:05-cv-03891-JSR | N.D. Ill. (Chicago) | 1:05-cv-00622 |
| Ortegon, Claudia | MDL; S.D.N.Y. | 1:04-cv-04281-JSR | S.D. Tex. (McAllen Div.) | 7:03-cv-00167 |
| Parks, Johnny | MDL; S.D.N.Y. | 1:05-cv-04703-JSR | W.D. Mo. (Kansas City) | 4:05-cv-00233-DW |
| Parks, Morris J. | MDL; S.D.N.Y. | 1:05-cv-01021-JSR | S.D. Tex. (Galveston) | 3:04-cv-00556 |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|----------------------|---------------|--------------------------------|----------------------------------------|---------------------------------------|
| Parsley, Lugene | MDL; S.D.N.Y. | 1:03-cv-09266-JSR | Circ. Ct., Illinois (State Court Case) | 03-L-537 |
| Patterson, Henry | MDL; S.D.N.Y. | 1:05-cv-03901-JSR | S.D. Miss. (Southern) | 1:05-cv-00081-LF-RHW |
| Pawlowski, Conrad | MDL; S.D.N.Y. | 1:04-cv-09351-JSR | E.D. Mich. (Detroit) | 2:04-cv-72239-RHC-RSW |
| Pettis, Thomas | MDL; S.D.N.Y. | 1:04-cv-07625-JSR | S.D. Ala. (Mobile) | 1:04-cv-00432-CG-M |
| Portillo, Gerald | MDL; S.D.N.Y. | 1:04-cv-04239-JSR | D. Kan. (Kansas City) | 2:04-cv-2032-KHV-DJW |
| Quaile, Audrey | MDL; S.D.N.Y. | 1:05-cv-01009-JSR | D. Kan. (Kansas City) | 2:04-cv-02345-KHV-JPO |
| Ramey, Debbie | MDL; S.D.N.Y. | 1:04-cv-04218-JSR | S.D. Cal. | 03-cv-0525-BTM-RBB |
| Ramirez, Amber | MDL; S.D.N.Y. | 1:05-cv-00155-JSR | S.D. Tex. (Houston) | H-04-3721 |
| Randle, Margaret | MDL; S.D.N.Y. | 1:05-cv-01012-JSR | E.D. Mo. (St. Louis) | 4:04-cv-01540-FRB |
| Rather, Fred | MDL; S.D.N.Y. | 1:04-cv-08306-JSR | S.D. Tex. (Galveston) | 3:04-cv-00309 |
| Reynolds, Cynthia | MDL; S.D.N.Y. | 1:05-cv-03897-JSR | E.D. Mo. (Eastern Division) | 4:05-cv-00179-CAS |
| Rhome, Nancy | MDL; S.D.N.Y. | 1:04-cv-08555-JSR | W.D. Pa. (Pittsburgh) | 2:02-cv-01461-JFC |
| Richardson, Brandon | MDL; S.D.N.Y. | 1:04-cv-06844-JSR | W.D. Wash. (Tacoma) | 3:04-cv-05252-RJB |
| Riordan, Donald | MDL; S.D.N.Y. | 1:04-cv-07626-JSR | W.D. Ark. (Fayetteville) | 5:04-cv-05152-RTD |
| Roaf, Derek | MDL; S.D.N.Y. | 1:05-cv-00159-JSR | E.D. Wis. (Milwaukee) | 2:04-cv-00907-TJC |
| Robertson, Rhealene | MDL; S.D.N.Y. | 1:05-cv-03013-JSR | E.D. Mo. (St. Louis) | 4:04-cv-01823-FRB |
| Romancik, Genevieve | MDL; S.D.N.Y. | 1:04-cv-04283-JSR | W.D. Tex. (El Paso) | 03-cv-278 |
| Ross, Mearlean | MDL; S.D.N.Y. | 1:05-cv-00146-JSR | S.D. Miss. (Jackson) | 3:04-cv-00821-HTW-JCS |
| Rowe, Duane | MDL; S.D.N.Y. | 1:04-cv-04253-JSR | E.D. Pa. (Philadelphia) | 2:03-cv-043646-MMB |
| Rubio, Melissa | MDL; S.D.N.Y. | 1:05-cv-05967-JSR | D. Ariz. (Phoenix) | 2:05-cv-00669-SMM |
| Rutherford, Ken | MDL; S.D.N.Y. | 1:05-cv-00150-JSR | S.D. Ohio (Cincinnati) | 1:04-cv-00545-SSB-TSH |
| Schlafhauser, Shelli | MDL; S.D.N.Y. | 1:04-cv-02891-JSR | W.D. Pa. (Pittsburgh) | 2:02-cv-01450-DSC |
| Schmidt, Mark | MDL; S.D.N.Y. | 1:04-cv-04220-JSR | S.D. Cal. | 03-cv-730 |
| Schrader, Rebecca | MDL; S.D.N.Y. | 1:04-cv-04270-JSR | E.D. Tex. (Lufkin) | 9:03-cv-00318-TH |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|-----------------------|---------------|-----------------------------------------|-----------------------------|---------------------------------------|
| Shupe , Terry | MDL; S.D.N.Y. | 1:04-cv-07640-JSR | S.D. Tex. (Houston) | 4:04-cv-02525 |
| Sinegal, Sandra | MDL; S.D.N.Y. | 1:04-cv-02892-JSR | E.D. Tex. (Beaumont) | 1:03-cv-00092-HC |
| Singleton, Marion | MDL; S.D.N.Y. | 1:04-cv-04260-JSR | E.D. Tex. (Beaumont) | 1:03-cv-00533-HC |
| Skinner, Rosie | MDL; S.D.N.Y. | 1:05-cv-00156-JSR | S.D. Tex. (Houston) | 4:04-cv-03723 |
| Snyder, Lisa | MDL; S.D.N.Y. | 1:05-cv-00139-JSR | S.D. Ind. (Indianapolis) | 1:04-cv-01609-LJM-WTL |
| Surratt, Christopher | MDL; S.D.N.Y. | 1:05-cv-01017-JSR | W.D.N.C. (Asheville) | 1:04-cv-00232 |
| Talavera, Irene | MDL; S.D.N.Y. | 1:04-cv-06820-JSR | N.D. Ill. (Chicago) | 1:04-cv-01629 |
| Thibodaux, Flossie | MDL; S.D.N.Y. | 1:04-cv-04250-JSR | N.D., Ohio (Cleveland) | 1:04-cv-00266-DAP |
| Thomas, James | MDL; S.D.N.Y. | 1:04-cv-07628-JSR | S.D. Ill. (East St. Louis) | 3:04-cv-00439-GPM-CJP |
| Thomas, June | MDL; S.D.N.Y. | 1:04-cv-07501-JSR | S.D.N.Y. | 1:04-cv-07501-JSR |
| Thuernau, Mark | MDL; S.D.N.Y. | 1:04-cv-07634-JSR | E.D. Mo. (St. Louis) | 4:04-cv-00693-HEA |
| Tiskevich, James | MDL; S.D.N.Y. | 1:04-cv-06772-JSR | N.D. Ill. (Chicago) | 1:04-cv-01591 |
| Todd, Barbara | MDL; S.D.N.Y. | 1:05-cv-03899-JSR | N.D. Miss. (Delta Division) | 2:05-cv-00046-WAP-EMB |
| Townsend, Gary | MDL; S.D.N.Y. | 1:04-cv-02896-JSR | N.D. Tex. (Dallas) | 3:03-cv-01353 |
| Troupe, Antoinette | MDL; S.D.N.Y. | 1:04-cv-04244-JSR; 1:04-cv-04891-JSR | E.D. Mo. (St. Louis) | 4:04-cv-00232-SNL |
| Troutman, Alison | MDL; S.D.N.Y. | 1:04-cv-07629-JSR | S.D. Ind. (Indianapolis) | 1:04-cv-00875-RLY-TAB |
| Tutka, Kathleen | MDL; S.D.N.Y. | 1:04-cv-06816-JSR | N.D. Ala. (Northeastern) | 5:04-cv-00431-CLS |
| Upson, Dianna | MDL; S.D.N.Y. | 1:04-cv-04214-JSR | N.D. Ala. (Western) | 7:03-cv-01034-KOB |
| Van Buren, Gregory A. | MDL; S.D.N.Y. | 1:04-cv-08209-JSR | N.D. Tex. (Dallas) | 3:04-cv-01508 |
| Vasquez, Sergio | MDL; S.D.N.Y. | 1:05-cv-01019-JSR | N.D. Tex. (Forth Worth) | 4:04-cv-00756 |
| Vaughn, Dennis | MDL; S.D.N.Y. | 1:04-cv-04263-JSR | E.D. Tex. (Beaumont) | 1:03-cv-00562-RC |
| Violette, Damon | MDL; S.D.N.Y. | 1:04-cv-04251-JSR | D. Or. (Portland) | 3:04-cv-00187-AS |
| Vnencak, James | MDL; S.D.N.Y. | 1:04-cv-06829-JSR | D.N.J. (Newark) | 2:04-cv-00501-HAA-GDH |
| Waltman, Michael | MDL; S.D.N.Y. | 1:05-cv-04705-JSR | S.D. Miss. (Hattiesburg) | 2:05-cv-00083-KS-JMR |

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|----------------------|---------------|--------------------------------|----------------------------|---------------------------------------|
| Waltman, Willie | MDL; S.D.N.Y. | 1:04-cv-06818-JSR | S.D. Ala. (Mobile) | 1:04-cv-00080-CG-B |
| Walton, Rosie | MDL; S.D.N.Y. | 1:05-cv-03903-JSR | S.D. Miss. (Western) | 5:05-cv-00023-DCB-JCS |
| Washington, Cheryl | MDL; S.D.N.Y. | 1:05-cv-05973-JSR | E.D. La. (New Orleans) | 2:05-cv-01673-LMA-JCW |
| Watkins, Edward | MDL; S.D.N.Y. | 1:05-cv-01010-JSR | D. Md. (Baltimore) | 1:04-cv-03849-SMN |
| Watson, Charles | MDL; S.D.N.Y. | 1:04-cv-04278-JSR | S.D. Tex. (Houston) | 4:03-cv-043357 |
| Watson, William | MDL; S.D.N.Y. | 1:05-cv-04693-JSR | N.D. Ala. (Northeastern) | 5:05-cv-00298-SLB |
| Weber, Diane | MDL; S.D.N.Y. | 1:04-cv-04248-JSR | W.D.N.Y. (Rochester) | 6:03-cv-06063-MAT-JWF |
| Weeks, Cynthia | MDL; S.D.N.Y. | 1:04-cv-04221-JSR | S.D. Cal. (San Diego) | 3-cv-731 |
| Weimer, Terry | MDL; S.D.N.Y. | 1:05-cv-04698-JSR | D. Minn. | 0:05-cv-00481-JRT-FLN |
| Wellman, Linda | MDL; S.D.N.Y. | 1:04-cv-04273-JSR | S.D. Tex. (Galveston) | 3:03-cv-00574 |
| Wells, Richard | MDL; S.D.N.Y. | 1:04-cv-08204-JSR | D. Minn. | 0:04-cv-03446-MJD-JGL |
| Westfall, Willard | MDL; S.D.N.Y. | 1:04-cv-04255-JSR | E.D. Pa. (Philadelphia) | 2:04-cv-01117-SD |
| Wigginton, Elizabeth | MDL; S.D.N.Y. | 1:04-cv-05466-JSR | S.D. Ill. (East St. Louis) | 3:03-cv-00384-DRH-CJP |
| Wilfong, Saylor | MDL; S.D.N.Y. | 1:05-cv-00160-JSR | N.D.W. Va. (Clarksburg) | 1:04-cv-205 |
| Williams, Sharon | MDL; S.D.N.Y. | 1:04-cv-07638-JSR | M.D. Tenn. (Nashville) | 3:04-cv-00662 |
| Winsor, George | MDL; S.D.N.Y. | 1:04-cv-02890-JSR | D. Mass. (Boston) | 1:02-cv-10387-JLT |
| Wolf, Judith | MDL; S.D.N.Y. | 1:05-cv-03012-JSR | E.D. Mo. (St. Louis) | 4:04-cv-01822-CAS |
| Wood, Jerry | MDL; S.D.N.Y. | 1:04-cv-04245-JSR | E.D. Mo. (St. Louis) | 4:04-cv-00233-DJS |
| Wright, Paul | MDL; S.D.N.Y. | 1:04-cv-04035-JSR | M.D. Tenn. (Nashville) | 3:03-cv-00809 |
| Wright, Robert | MDL; S.D.N.Y. | 1:05-cv-05969-JSR | M.D. Fla. (Tampa) | 8:05-cv-00665-EAK-MAP |
| Yarwood, Douglas | MDL; S.D.N.Y. | 1:04-cv-06825-JSR | E.D. Mo. (St. Louis) | 4:04-cv-00133-ERW |
| | | | | |

Due to incomplete information, this list may exclude an action that was pending on the Petition Date but was subsequently dismissed as to all parties, or include such action without noting the subsequent dismissal.

| Plaintiff | MDL-1598 | Civil Action No. (S.D.N.Y.) | Transferring Court | Civil Action No. (Transferring Court) |
|-----------|----------|--------------------------------|--------------------|------------------------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |